

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

In the Matter of

THE W.N. CONNELL and MARJORIE
T. CONNELL LIVING TRUST, dated
May 18, 1972.

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73837

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Court Judge
District Court Case No. P-09-066425-T

APPELLANT'S APPENDIX

VOLUME 4: AAPP 376 through AAPP 500

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Supreme Court Case No. 73837

In the Matter of THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972.

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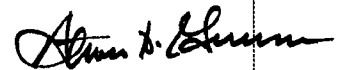
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SUBMITTED TO THE COURT FOR
IN CAMERA
REVIEW

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ORDR

DISTRICT COURT



CLERK OF THE COURT

CLARK COUNTY, NEVADA

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

In the Matter of THE W.N. CONNELL
AND MARJORIE T. CONNELL LIVING
TRUST DATED May 18, 1972, An Inter
Vivos Irrevocable Trust

**ORDER REGARDING MOTION FOR
ASSESSMENT OF DAMAGES;
ENFORCEMENT OF NO CONTEST
CLAUSE; AND SURCHARGE OF
TRUST INCOME**

Date of Hearing: February 22, 2016
Time of Hearing: 9:30 a.m.

On June 3, 2015, Jacqueline M. Montoya and Kathryn A. Bouvier ("Movants" or "Ms. Montoya and Ms. Bouvier"), through counsel, filed a *Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* (the "Motion"), and on July 31, 2015, filed a Supplement to the Motion.

On June 29, 2015, Eleanor Connell Hartman Ahern ("Ms. Ahern"), through counsel, filed an opposition to the Motion and, on August 3, 2015, filed a *Motion to Strike Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* ("Motion to Strike"). The Court has not yet ruled on the Motion to Strike.

The Court held an evidentiary hearing on February 22, 2016, which continued on March 3, 2016 (the "Hearings"). On February 22, 2016, legal arguments were presented by all parties, and the testimony of two witnesses, Fredrick Waid and Jacqueline Montoya, was offered. On March 3, 2016, the parties made closing arguments.

//

1 At the Hearings, Ms. Montoya and Ms. Bouvier were represented jointly by
2 attorneys Layne T. Rushforth, Esq., Joseph J. Powell, Esq., and Daniel P. Kiefer, Esq., of
3 The Rushforth Firm, Ltd; Ms. Ahern was represented by Tamara Beatty Peterson, Esq.,
4 and Kirk B. Lenhard, Esq., of Brownstein Hyatt Farber Schreck, LLP; and Fredrick P.
5 Waid, in his capacity as the acting trustee of The W.N. Connell and Marjorie T. Connell
6 Living Trust, dated May 18, 1972 (the "Trust"), was represented by Todd L. Moody, Esq.,
7 and Russel J. Geist, Esq., of Hutchison & Steffen, LLC.

8 After consideration of the evidence and arguments presented by the parties and
9 their counsel at the Hearings, and the papers and pleadings on file herein, the Court finds
10 as follows:

11 1. Ms. Ahern, as Trustee, did not comply with the Court order to protect the
12 65% share of the Trust that was to be segregated under the terms of the Trust for the
13 Movants, Ms. Montoya and Ms. Bouvier.

14 2. Ms. Ahern's failure to properly apply her duties as a Trustee does not
15 warrant imposition of the harsh remedy of imposition of the no-contest clause,
16 specifically her failure to seek Court approval before ceasing payments to the Movants.
17 Therefore, the Court will not enforce the no-contest clause as against Ms. Ahern as
18 beneficiary.

19 3. Ms. Ahern's failure to comply with the Court's Order to protect the
20 Movants' 65% share, however, resulted in a misapplication of the Trust income, which
21 deprived the Movants of funds owed to them under the terms of the Trust. Ms. Ahern's
22 misapplication of Trust funds warrants a surcharge against Ms. Ahern's 35% share of the
23 Trust, to be paid to Movants, in a total amount to be determined at a future hearing to be
24 set by this Court.

25 4. Additional briefing and argument is needed on the issues of punitive and
26 treble damages. It is expected that the additional briefing on such damages, and the
27 hearing on the total amount owed to Movants, will be scheduled after the Successor
28 Trustee, Fredrick P. Waid ("Mr. Waid") finalizes his accounting for the Court.

1 5. Until such time as the Court decides the total amounts owed by Ms. Ahern,
2 it is necessary to withhold all distributions to Ms. Ahern, other than those amounts
3 previously approved as advancements by the Court's *Order Instructing Trustee to*
4 *Advance Funds* dated December 29, 2015, which was entered on January 5, 2016. The
5 suspension of Ms. Ahern's share under this order will be effective thirty (30) days after a
6 Notice of Entry of Order is filed with respect to this Order. This ruling does not supersede
7 or modify the Court's *Order on Petition for Instructions Regarding Allocations of Eleanor*
8 *Ahern's 2015 Trust Unpaid Distributions*.

9 6. In further violation of this Court's Orders, Ms. Ahern removed some funds
10 from Trust accounts before turning those accounts over to the Successor Trustee, Mr. Waid.
11 Some funds have since been turned over to the Successor Trustee, however, until such
12 time as Mr. Waid can provide an Accounting the Court cannot rule on Ms. Ahern potential
13 liability. The exact amount of any damages resulting from these serious breaches of
14 fiduciary duty will be determined at a later evidentiary hearing.

15 7. NRS Chapter 165 imposes a fiduciary duty on Ms. Ahern, as Trustee, had
16 to account for all assets and income received by her and for all distributions made by her.
17 Although Ms. Ahern has been removed or suspended from her role as Trustee, she has
18 not be discharged from her fiduciary duties pending her compliance, and the Court's
19 approval of the accounting to be filed by the successor Trustee, Mr. Waid. The Court
20 found that the account Ms. Ahern filed, under penalty of perjury on March 13, 2015, titled
21 "Brief Regarding Accounting Fiduciary Duties, and Trust Administration", was
22 incomplete and intentionally inaccurate. Ms. Ahern, therefore, remains statutorily
23 obligated to cooperate with the successor Trustee, Mr. Waid, in furtherance of Mr. Waid's
24 accounting, until such time as the Court enters a full and complete discharge of Ms.
25 Ahern.

26 8. Movant's seek punitive damages, which requires a finding of willful and
27 malicious conduct. In the alternative, Movants seek treble damages for breach of fiduciary
28 duty. Ms. Ahern's conduct was shocking and needs to be dealt with in a serious fashion,

1 but the final decision on whether punitive and/or treble damages should be awarded in
2 addition to restitution will be made at the evidentiary hearing to be scheduled after Mr.
3 Waid concludes discovery and prepares his report and accounting to the Court.

4 9. After viewing an independent medical evaluation *in camera*, the Court
5 finds that Ms. Ahern is competent to sit for a deposition in this matter.

6 **ORDER**

7 Upon the Court's consideration of the evidence and arguments presented by the
8 parties and their counsel at the hearing on the Motion, and good cause appearing therefore:

9 1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Movants'
10 request to enforce the no-contest clause against Ms. Ahern is denied.

11 2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Trust
12 distributions to Ms. Ahern are suspended upon the following conditions:

13 a. The suspension shall take effect thirty (30) days after notice of entry
14 of this Order is filed;

15 b. The suspension shall continue until Movants have been paid in an
16 amount to be determined at a hearing set by this Court following the completion of an
17 accounting of the Trust assets by the interim Trustee, Mr. Waid.

18 3. IT IS FURTHER ORDER ADJUDGED AND DECREED that Mr. Waid
19 shall prepare a report and a trustee's account, and upon completion, a hearing on the
20 amounts owed by Ms. Ahern, including any punitive or treble damages, shall be
21 conducted, unless the parties stipulate otherwise.

22
23 DATED this 13th of September, 2016.

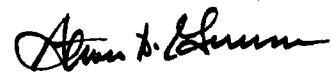
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26 DISTRICT COURT JUDGE
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CLERK OF THE COURT

1 **ORDER**

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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 In the matter of

Case No.: P-09-066425-T
Dept. 26

16 THE W.N. CONNELL AND MARJORIE T.
17 CONNELL LIVING TRUST DATED May
18 18, 1972, an Inter Vivos Irrevocable Trust.

19 **ORDER RE: ELEANOR AHERN'S DEPOSITION**

20 Date of Hearing: 10/05/16
21 Time of Hearing: 9:30 a.m.

22 A hearing was held on October 5, 2016 on the PETITION FOR ORDER DIRECTING
23 TRANSFER OF TENANCY IN COMMON INTEREST IN UPTON COUNTY, TEXAS
24 PROPERTY TO THE MTC LIVING TRUST. Fredrick, P. Waid, acting Successor Trustee
25 ("Trustee") of The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972
26 ("Trust") scheduled the deposition of Eleanor Ahern to occur immediately following the
27 hearing. The Trustee was represented by Todd L. Moody and Russel J. Geist of Hutchison &
28 Steffen, LLC; Eleanor Connell Hartman Ahern ("Eleanor Ahern") was represented by Kirk
Lenhard of Brownstein, Hyatt, Farber & Schreck, LLP; Terry A. Coffing appeared on behalf of
Marquis Aurbach Coffing; and Jacqueline M. Montoya and Kathryn A. Bouvier were
represented by Joseph J. Powell and Daniel Kiefer of The Rushforth Firm. Eleanor Ahern
through her counsel represented to the Court that she was unable to appear for the scheduled

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1 deposition due to medical reasons. Mr. Lenhard presented a copy of a letter received from a
2 physician regarding Eleanor Ahern's condition preventing her from appearing for the
3 deposition. The Court reviewed the physician's letter and heard statements from counsel on
4 Eleanor Ahern's absence and the physician's letter.

5 THE COURT FINDS that it is necessary for Eleanor Ahern to sit for a deposition in
6 order for her to fulfil her fiduciary duties as former trustee of the Trust and provide relevant
7 information to the Trustee regarding administration of the Trust when she was serving as
8 trustee so the Trustee may complete his report on the Trust for the Court and the parties.

9 Having considered the same and good cause appearing,

10 IT IS HEREBY ORDERED that Eleanor Ahern is ordered to produce the physician's
11 letter which purports to excuse Eleanor Ahern from the deposition scheduled on October 5,
12 2016 to counsel for the Trustee.

13 IT IS FURTHER ORDERED Eleanor Ahern must submit to a deposition to occur by
14 November 4, 2016.

15 IT IS FURTHER ORDERED that if Eleanor Ahern does not submit to a deposition to
16 occur by November 4, 2016, then the Court will issue sanctions against Eleanor Ahern based on
17 a Motion for Sanctions brought on order shortening time by the Trustee.

18 IT IS FURTHER ORDERED that if Eleanor Ahern does not submit to a deposition to
19 occur by November 4, 2016, then the Trustee is authorized and permitted to complete his report
20 with the information and knowledge of the facts and circumstances of the administration of the
21 Trust as he has at the time.

22 ///

23 ///

24 ///

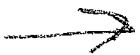
1 IT IS FURTHER ORDERED that the Trustee shall issue his final report by November
2 30, 2016.

3 Dated this 20th day of October, 2016.

4
5 
6 District Court Judge

6 Submitted by:

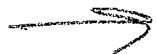
7 HUTCHISON & STEFFEN, LLC

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35 *Attorneys for Jacqueline M. Montoya and*
36 *Kathryn A. Bouvier*

1 IT IS FURTHER ORDERED that the Trustee shall issue his final report by November
 2 30, 2016.

3 Dated this ____ day of October, 2016.

4
 5 
 District Court Judge

6 Submitted by:

7 HUTCHISON & STEFFEN, LLC


8 

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14 Approved as to form and content:


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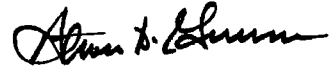
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26 *Attorneys for Jacqueline M. Montoya and
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28



CLERK OF THE COURT

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7 *Attorneys for Fredrick P. Waid,
Court-appointed Trustee*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the matter of

Case No.: P-09-066425-T
Dept. 26

11 THE W.N. CONNELL AND MARJORIE T.
12 CONNELL LIVING TRUST DATED May
18, 1972, an Inter Vivos Irrevocable Trust.

13
14
15 **AMENDED ORDER RE: ELEANOR AHERN'S DEPOSITION**

16 Date of Hearing: 10/05/16
17 Time of Hearing: 9:30 a.m.

18 A hearing was held on October 5, 2016 on the PETITION FOR ORDER DIRECTING
19 TRANSFER OF TENANCY IN COMMON INTEREST IN UPTON COUNTY, TEXAS
20 PROPERTY TO THE MTC LIVING TRUST. Fredrick, P. Waid, acting Successor Trustee
21 ("Trustee") of The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972
22 ("Trust") scheduled the deposition of Eleanor Ahern to occur immediately following the
23 hearing. The Trustee was represented by Todd L. Moody and Russel J. Geist of Hutchison &
24 Steffen, LLC; Eleanor Connell Hartman Ahern ("Eleanor Ahern") was represented by Kirk
25 Lenhard of Brownstein, Hyatt, Farber & Schreck, LLP; Terry A. Coffing appeared on behalf of
26 Marquis Aurbach Coffing; and Jacqueline M. Montoya and Kathryn A. Bouvier were
27 represented by Joseph J. Powell and Daniel Kiefer of The Rushforth Firm.

28 ///

HUTCHISON & STEFFEN

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1 Eleanor Ahern through her counsel represented to the Court that she was unable to
2 appear for the scheduled deposition due to medical reasons. Mr. Lenhard presented a copy of a
3 letter received from a physician regarding Eleanor Ahern's condition preventing her from
4 appearing at the hearing and for the deposition. The Court reviewed the physician's letter and
5 heard statements from counsel on Eleanor Ahern's absence and the physician's letter. Since
6 April of 2015, the Court has entered multiple orders and repeatedly admonished Ms. Ahern to
7 appear for her deposition to assist the Successor Trustee in completing a final and accurate
8 accounting. To date, Ms. Ahern has not complied with the Court's orders or admonitions in this
9 regard.

10 In its most recent Order, the Court ordered that Eleanor Ahern submit to a deposition to
11 occur by November 4, 2016. However, before the deposition could be set, the parties were
12 engaged in settlement discussions, an agreement in principle was reached by all parties, and Ms.
13 Ahern's counsel requested the Successor Trustee to request an immediate Status Check hearing
14 with the Court so the settlement could be read into the record, which would have resolved all
15 remaining issues. On Monday November 7, 2016, Mr. Lenhard, counsel for Ms. Ahern,
16 communicated that she had withdrawn her agreement to the pending settlement. The
17 discussions concluded without an agreement, and the deadline for Eleanor Ahern to submit to a
18 deposition must be reset immediately to allow the Successor to complete tax and other filings
19 before the end of 2016.

20 THE COURT FINDS that it is necessary for Eleanor Ahern to sit for a deposition in
21 order for her to fulfil her fiduciary duties as former trustee of the Trust and provide relevant
22 information to the Trustee regarding administration of the Trust when she was serving as
23 trustee so the Trustee may complete his report on the Trust for the Court and the parties.

24 Having considered the same and good cause appearing,

25 IT IS HEREBY ORDERED that Eleanor Ahern is ordered to produce the physician's
26 letter which purports to excuse Eleanor Ahern from the deposition scheduled on October 5,
27 2016 to counsel for the Trustee.

1 IT IS FURTHER ORDERED Eleanor Ahern must submit to a deposition to occur by
2 November 29, 2016.

3 IT IS FURTHER ORDERED that if Eleanor Ahern does not submit to a deposition to
4 occur by November 29, 2016, then the Court will issue sanctions against Eleanor Ahern
5 including contempt not committed in the immediate view and presence of the court pursuant to
6 NRS 22.030(2), and will entertain a motion for sanctions and/or for an order to show cause on
7 an order shortening time.

8 IT IS FURTHER ORDERED that if Eleanor Ahern does not submit to a deposition to
9 occur by November 29, 2016, then the Trustee is authorized and permitted to complete his
10 report with the information and knowledge of the facts and circumstances of the administration
11 of the Trust as he has at the time.

12 IT IS FURTHER ORDERED that the Trustee shall issue his final report thereafter upon
13 determining the final tax liability and/or refund due to the Trust from amended tax returns.

14 Dated this ____ day of November, 2016.

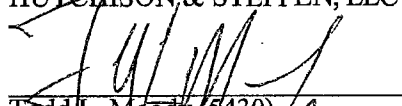
15
16 
17 District Court Judge

18 Submitted by:

19 HUTCHISON & STEFFEN, LLC

18 Approved as to form and content:


19 BROWNSTEIN HYATT FARBER SCHRECK, LLP

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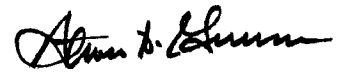
24 Attorneys for Fredrick P. Waid,
25 Court-appointed Trustee

26
27
28 Submitted in open court.


1 Approved as to form and content:
2 THE RUSHFORTH FIRM, LTD.

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8 *Attorneys for Jacqueline M. Montoya and*
9 *Kathryn A. Bouvier*
10
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CLERK OF THE COURT

1 **NTTD**
Todd L. Moody (5430)
2 Russel J. Geist (9030)
HUTCHISON & STEFFEN, LLC
3 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
4 (702) 385-2500
(702) 385-2086 FAX
5 tmoody@hutchlegal.com
rgeist@hutchlegal.com

6 *Attorneys for Fredrick P. Waid Court-Appointed*
7 *Acting Successor Trustee*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 In the matter of

Case No.: P-09-066425-T
Dept. 26

11 THE W.N. CONNELL AND MARJORIE T.
12 CONNELL LIVING TRUST DATED May
13 18, 1972, an Inter Vivos Irrevocable Trust.

14 **SECOND NOTICE OF TAKING VIDEO DEPOSITION ELEANOR AHERN**

15 TO: ELEANOR AHERN;

16 TO: KATHRYN A. BOUVIER and JACQUELINE M. MONTOYA; and

17 TO: THEIR ATTORNEYS OF RECORD.

18 PLEASE TAKE NOTICE that at 11:00 o'clock a.m. on November 29, 2016 at the law
19 office of Hutchison & Steffen, LLC, 10080 West Alta Drive, Suite 200, Las Vegas, Nevada,
20 89145, Fredrick P. Waid, Court-Appointed Acting Successor Trustee, by and through his
21 attorneys, will take the sound-and-visual deposition of **ELEANOR AHERN** by oral
22 examination, pursuant to Rule 30 of the Nevada Rules of Civil Procedure (NRCPP) and the
23 Order re: Eleanor Ahern's Deposition, filed November 3, 2016. The deposition will be
24 conducted before an officer appointed or designated under NRCPP 28. The witness will be
25 placed under oath and testimony will be recorded.

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The deposition is limited to 1 day of 7 hours. The deponent's failure to attend or participate may be subject to the sanctions set forth in NRCP 37.

DATED November 7, 2016.

HUTCHISON & STEFFEN, LLC



Todd L. Moody (5430)
Russel J. Geist (9030)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Attorneys for Fredrick P. Waid Court-appointed Trustee

CERTIFICATE OF SERVICE

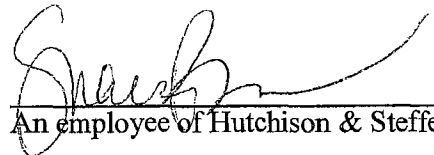
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and on this 7th day of November, 2016, I caused the above and foregoing document entitled **SECOND NOTICE OF TAKING VIDEO DEPOSITION OF ELEANOR AHERN** to be served as follows:

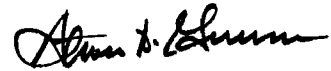
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via facsimile; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service submitted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Kirk B. Lenhard, Esq.
Brownstein, Hyatt, Farber & Schreck, LLP
100 N. City Parkway, #1600
Las Vegas, NV 89106
Attorneys for Eleanor Connell Hartman Ahern

Joseph J. Powell, Esq.
The Rushforth Firm
1707 Village Center Circle, Ste. 150
Las Vegas, NV 89134
Attorneys for Jacqueline M. Montoya and Kathryn A. Bouvier


An employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

1 RESP

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 *In the Matter of:*

6 THE W.N. CONNELL AND MARJORIE T. CONNELL)
7 LIVING TRUST DATED MAY 18, 1972, An Inter)
8 Vivos Irrevocable Trust)
9)
10)

CASE NO. P-09-066425

DEPT. XXVI

11
12 RESPONSE TO MOTION TO WITHDRAW
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24
25



Penny Gilliam <checks@mail@gmail.com>

Via facsimile. This one

1 message

Eleanor@connelltrust.lawyer <Eleanor@connelltrust.lawyer>
To: ChecksMail@gmail.com

Wed, Nov 23, 2016 at 9:32 AM

Via facsimile

For immediate delivery

Please deliver to Judge Gloria Sturman for the

9:30 am Hearing
Sturman court

November 23, 2015

In the matter of:
The William N. Connell and Marjorie T. Connell Living Trust
Dated May 18, 1972

P 009 66425 T

Good morning your honor

Today as you consider Kirk Lenhards motion to withdraw. Please do not leave me without counsel.

I am asking that you order the temporary trustee, Fred Waid, to pay for new counsel for me in a timely fashion as we move forward from today. I can not be without counsel. I have need of counsel.

Thank you your honor

Please read the attached / following pages. It's a quick read

Eleanor Connell Hartman Ahern

PS.

If you grant the lien please protect me and

1) ensure I get a complete copy of my entire file inclusive of all the correspondence between any and all parties from Brownstein

2) Please make the brownstein lien subject to my review. I do not have the supporting detail of the requested amount in the " final bill " I would like the opportunity to see all the detail and discuss it with Kirk. It was not given to me with enough time to review

3) put this lien behind paying new counsel.

Your honor, Thank you,


CLERK OF THE COURT

1 RTRAN

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 In the Matter of the Trust of:

8 The W.N. Connell and Marjorie T.
9 Connell Living Trust, dtd May 18,
10 1972
11

CASE NO. P-066425

DEPT. XXVI

12 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE
13

14 WEDNESDAY, NOVEMBER 23, 2016

15 **RECORDER'S TRANSCRIPT OF PROCEEDING:**

16 **MOTION: MARQUIS AURBACH COFFING'S MOTION TO ADJUDICATE**
17 **ATTORNEY'S LIEN... MOTION: MOTION TO WITHDRAW AS COUNSEL ON**
18 **ORDER SHORTENING TIME**

19 APPEARANCES:

20 For the Petitioner: EMILY ELLIS, ESQ.

21 For Other: TERRY COFFING, ESQ.

22 For Trustee Waid: RUSSELL GEIST, ESQ.

23 For Others: JOSEPH POWELL, ESQ.

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25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

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ALSO APPEARING:

Trustee:

FRED WAID

Possible Petitioner Counsel:

LAWRENCE SEMENZA, ESQ.

1 WEDNESDAY, NOVEMBER 23, 2016 AT 9:26 A.M.

2
3 THE COURT: Not, not yet. We'll just give them just a minute, Mr. Waid.
4 Thanks.

5 [Trailed at 9:26 a.m.]

6 [Proceeded at 9:35 a.m.]

7 Yeah, I think we're just -- I think that everybody's here on Connell then,
8 yeah. We can do Connell. I doubt that Mr. Lenhard's going to appear so.

9 MS. ELLIS: I'm here on his behalf though.

10 THE COURT: Oh, you're on his behalf. Okay. Thanks.

11 MS. ELLIS: Yes, ma'am.

12 THE COURT: Okay. Great. Thanks. All right. So we're ready to go
13 then. All right. So have everybody make their appearances.

14 MR. GEIST: Good morning, Your Honor, Russell Geist, Bar Number:
15 9030 on behalf of Trustee, Fred Waid. Fred Waid is also present today.

16 THE COURT: Okay.

17 MR. POWELL: Good morning, Your Honor, Joey Powell appearing on
18 behalf of Jacqueline Montoya and Kathryn Bouvier.

19 MR. COFFING: Terry Coffing on behalf of Marquis Aurbach and Coffing.

20 THE COURT: Uh-huh.

21 MS. ELLIS: Emily Ellis, Bar Number: 11956 for Kirk Lenhard on behalf of
22 Eleanor Ahern.

23 THE COURT: Uh-huh.

24 MR. SEMENZA: And my name is Lawrence Semenza --

25 THE COURT: Uh-huh.

1 MR. SEMENZA: -- 789 Your Honor, and I'm not making a special
2 appearance and so, I don't think we have special appearances anymore but --

3 THE COURT: Right.

4 MR. SEMENZA: -- I am concerned about Ms. Ahern who has contacted
5 me --

6 THE COURT: Uh-huh.

7 MR. SEMENZA: -- with respect to possible representation in this matter,
8 Your Honor.

9 THE COURT: Great. Okay. We did just receive --

10 [Colloquy between Court and Law Clerk]

11 THE COURT: We're going to need more copies. Something, she sent
12 something. All right. So run a couple -- we got a couple here. I got -- Ron you
13 want to take this over there?

14 THE MARSHAL: Yes, Judge. [Marshal takes document from Court and
15 distributes to Counselors].

16 MR. SEMENZA: I'm not sure of this, that's why I'm sitting over here
17 instead of over there.

18 [Document being reviewed by Counselors]

19 MR. GEIST: Your Honor, I'm assuming that was faxed to your office?

20 THE COURT: Yes. Mr. Lee, if you can distribute these for us, please.

21 COURT MARSHAL: Yes, Judge.

22 [Marshal hands out document from Bench to Counselors]

23 THE COURT: We'll go on the record. All right. So this is case 66425-T.
24 This is correspondence faxed to Court chambers this morning, apparently from
25 Ms. Ahern. Starting with:

1 "Good morning, Your Honor, today as you consider Kirk
2 Lenhard's Motion to Withdraw, please do not leave me without
3 counsel. I'm asking that you order the Temporary Trustee, Fred
4 Waid, to pay for new counsel for me in a timely fashion as we
5 move forward from today. I cannot be without counsel. I have
6 need of counsel. Thank you, please read the attached following
7 pages, it's a quick read."

8 My concern is that just having scanned what she's attached here,
9 there's a lot about settlement discussions and also attorney-client
10 communication which is, you know, not proper for me to be aware of. I
11 appreciate Ms. Ahern's concern that she needs counsel. She does – she
12 desperately needs counsel.

13 For example, just looking at the very first paragraph, I'm – she's –
14 it's pretty clear that – third page rather. It's pretty clear that she still does not
15 understand what's happened here. The – she seems to think that I have said
16 that I would not throw her in jail, and I think she misunderstands my intentions.
17 I have said I don't want to throw her in jail. She is in contempt of this Court.

18 I understand that there was a contempt hearing which did not find
19 that. I still – I still continue to believe that she is in contempt of my orders.
20 And I – she is in desperate need of somebody who she will listen to to give her
21 advice. And it is unfortunate that it appears she doesn't listen to any attorney.
22 So while I appreciate Mr. Semenza's willingness to take on the challenge of Ms.
23 Ahern who has desperate need of his services. I just want you to know that
24 Mr. Semenza, this is – this has been a very challenging case for everybody due
25 to what appears to be the influence of non-parties on Mrs. Ahern, and it's – it's

1 very unfortunate.

2 Ms. Ahern asks for funds and for counsel to be paid. She doesn't
3 understand that her fate is in her own hands, and that it is through her own
4 actions that she has left the Court with no alternative but to take the action
5 that's been taken to attempt to recover the funds that were wrongfully diverted
6 from the Trust, in my opinion. That's what she has left me with.

7 And while I appreciate her request that she needs to be – to have
8 an attorney and to be able to pay that attorney, if she had cooperated with her
9 Attorney and with her Trustee, we wouldn't be in this situation. She would
10 have had the money. So, you know, this is what it is. We'll left side file it so
11 it's in the – in the record as having been received and reviewed by the Court.
12 As said, I didn't read every page as she had asked me to do. Once I realized
13 she had settlement negotiations and attorney-client communications throughout
14 this document.

15 So we'll file it, and I just leave it to Counsel to determine if they
16 think there's any portion that needs to be sealed given the nature of what she
17 discloses. So moving onto –

18 MS. ELLIS: Your Honor.

19 THE COURT: -- what we have before us. We have --

20 MS. ELLIS: Your Honor, my apologies for interrupting. When will it be
21 filed? I just wanted to give a – be able to look through it and see if there's
22 anything that we need to seal for attorney-client purposes? Is there a time
23 period in which we have to do that?

24 THE COURT: Well, it depends. I mean, if we – if we left side file it we –
25 it just means it's in our correspondence, essentially.

1 MS. ELLIS: Okay. Thank you, Your Honor.

2 THE COURT: If we file it as a pleading received from a person who is
3 apparently going to be a pro se. If we were to send it to the Clerk's Office and
4 say: Please file it, then it would have to be sealed.

5 MS. ELLIS: Thank you, Your Honor.

6 THE COURT: So that's why I – for now, I'm just going to left side file it
7 and you can advise me if you think – because I looked at it and I got nervous. I
8 felt I shouldn't read any further, because I thought there were settlement
9 negotiations and attorney-client communications in here. So I'm not going to
10 read it. We'll just left-side file it and if you – if you say, "No, this needs – if
11 Mr. Semenza decides to take on this case and he wants it filed as his client's
12 position, then that's fine, he can ask us to file it.

13 But for right now we're – if everybody else says no, don't file it it
14 really – it should be – in fact, it should be sealed because we don't want any of
15 this information even in the record. It's – it's available, for example, if the
16 Supreme Court gets a copy of the file on an appeal they can see it, but it's not
17 available for the public to see it. So I just don't know what to do with it.

18 For now we're going – we'll put it in the file so that it's available to
19 the Court to – if we get a request to file it, great, if we get a request to seal it,
20 great, but it'll be in our file because we're paperless. So it – we have to do
21 something with it and that's – my suggestion is we left-side file it, and you can
22 advise us if you have a request that we did seal it.

23 MS. ELLIS: Thank, Your Honor.

24 THE COURT: Because I – I do think there's settlement negotiations, at
25 least, just even starting to read it as I did I just – I – I can't go – I can't read

1 any further. I'm not supposed to know this stuff so.

2 MS. ELLIS: [Laughs]. And we appreciate that, thank you, Your Honor.

3 MR. SEMENZA: Thanks.

4 THE COURT: But her cover page is, is -- her request is that that we make
5 funds available to pay counsel so that she can move forward from today. Fine.
6 The first Motion is to Withdraw as Counsel on an Order Shortening Time.
7 There's no opposition, as far as I know, to Mr. Lenhard's Motion to Withdraw.
8 Is Mr. Lenhard going to be submitting a lien?

9 MR. SEMENZA: Excuse me, Your Honor.

10 THE COURT: Yes.

11 MR. SEMENZA: Go ahead with your question, pardon me.

12 THE COURT: I -- yeah, is Mr. Lenhard going to be submitting a lien?

13 MS. ELLIS: Yes, Your Honor.

14 THE COURT: Okay, thanks.

15 MS. ELLIS: We --

16 MR. SEMENZA: Already have.

17 THE COURT: So this is just to Withdraw as Counsel? Okay, so --

18 MS. ELLIS: Yes, and we -- and we served the notice of the lien on all
19 parties including Ms. Ahern, and once -- we just received an email back that she
20 has actually received the notice of the lien --

21 THE COURT: Okay.

22 MS. ELLIS: -- so then we can move forward with any motion practice.

23 THE COURT: Okay. Fine. Well, the Motion to Withdraw then is granted
24 if send over an order.

25 MR. SEMENZA: Excuse me, Your Honor.

1 THE COURT: Yes.

2 MR. SEMENZA: Before you enter that. There is one problem that --

3 THE COURT: Uh-huh.

4 MR. SEMENZA: -- confronts me if I were to assume the responsibility of
5 representing Ms. Ahern.

6 THE COURT: Correct.

7 MR. SEMENZA: And that's that, there is a deposition scheduled for
8 Tuesday --

9 THE COURT: Uh-huh.

10 MR. SEMENZA: -- I believe, by the Trustee.

11 THE COURT: Next.

12 MR. SEMENZA: This coming Tuesday.

13 MR. WAID: This coming Tuesday.

14 MR. SEMENZA: A week from yesterday, Your Honor.

15 THE COURT: Yeah, uh-huh. Right. Uh-huh.

16 MR. SEMENZA: And I am exceedingly hesitant to want to jump into a
17 case where I am unfamiliar with the facts and circumstances --

18 THE COURT: Uh-huh.

19 MR. SEMENZA: -- and I have not had the opportunity to speak to Mr.
20 Lenhard. And the Trustee was gracious enough this morning to introduce
21 himself, thinking that I might be here on this matter --

22 THE COURT: Uh-huh.

23 MR. SEMENZA: -- but that's an impediment to any -- to my entering into
24 representation of her.

25 THE COURT: What does that have to do with Mr. Lenhard withdrawing?

1 Nothing.

2 MR. SEMENZA: Well --

3 THE COURT: So Mr. Lenhard's motion's granted.

4 MR. SEMENZA: Excuse me, Your Honor.

5 THE COURT: No, it's, it's granted.

6 MR. SEMENZA: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MS. ELLIS: No, Your Honor. Thank you.

9 THE COURT: Okay. Thank you. All right. And I'm sure if Ms. Ahern
10 does obtain counsel, you can deal with them about whether you have a
11 retaining lien that you're going to be asserting, on her file, or if you're going to
12 turn the file over --

13 MR. SEMENZA: Thank you, Your Honor.

14 THE COURT: -- because that's been a matter of much litigation with
15 other counsel throughout this litigation, so I'm just giving you a warning, Mr.
16 Semenza. The other motion that we have on then is Mr. Coffing's Motion to
17 Perfect the Lien, Mr. Coffing.

18 MR. COFFING: Your Honor, I think the opposition to our motion was
19 primarily based upon the issue of redacted versus unredacted bills --

20 THE COURT: Uh-huh.

21 MR. COFFING: -- and I think that that issue may -- has -- be somewhat
22 resolved itself at this point in time. So I'd like to provide that information to Mr.
23 Waid to the extent that he still wants it, and then perhaps you can status check
24 this for a couple of weeks so that we may bring you, hopefully, some resolution
25 of that.

1 THE COURT: Is there any need to get this resolved before the end of the
2 – other than, I'm sure Mr. Coffing would like to know that his – his lien's on file
3 –

4 MR. COFFING: You know what, in –

5 THE COURT: -- before the end of the year for accounting purposes.

6 MR. COFFING: No, I don't – not for my accounting purposes.

7 THE COURT: Okay.

8 MR. COFFING: I don't know about the trust.

9 MR. WAID: I don't believe so, Your Honor.

10 THE COURT: Okay.

11 MR. WAID: I appreciate his offer to provide that and it will assist at the
12 evidentiary hearing –

13 THE COURT: Okay.

14 MR. WAID: -- in February.

15 THE COURT: All right. So we're – rather than rule on the motion to
16 adjudicate Marquis Coffings lien today, you want it continued to –

17 MR. COFFING: Well, Your Honor, if – and if we could adjudicate the lien
18 at least as it relates to Ms. Ahern, subject to the review of Mr. Waid, if any of
19 the charges he believes are properly attributable to the Trust, then that would
20 reduce the lien as it relates to Ms. Ahern, and at least puts me on par with
21 everyone else.

22 MR. WAID: And I'm fine with that, Your Honor, it's reasonable.

23 THE COURT: Okay so.

24 MR. COFFING: So I'm asking you to adjudicate our lien in the full
25 amount, subject to a status check in which that amount may – as it relates to

1 Ms. Ahern –

2 THE COURT: Will be.

3 MR. COFFING: -- subject to that being reduced, based upon Mr. Waid's
4 review of the bills.

5 THE COURT: And certainly the bills may be, in fact, attributable to Trust
6 or –

7 MR. COFFING: Correct.

8 THE COURT: -- and properly paid by the Trust.

9 MR. COFFING: Correct.

10 THE COURT: Okay. So the – the only thing the status check would do
11 would be to adjust it down with respect to personal responsibility?

12 MR. COFFING: That is correct.

13 THE COURT: And that's all we're going to do is make – parse that out as
14 to what's the responsibility of the Trust versus Ms. Ahern. Okay. Mr. Powell.
15 Your client's – what's their position on –

16 MR. POWELL: Well, if I'm understanding what we're talking about is that
17 the last time this – that motion was on calendar, Your Honor, was very clear,
18 based on our objection and Mr. Waid's response to which he was saying is. We
19 can't siphon off what is – what you are claiming is trust related versus what
20 you're claiming is her personal obligation.

21 THE COURT: Uh-huh.

22 MR. POWELL: So you had – you had indicated is – without seeing that
23 and a supplement being filed in by Mr. Coffing, you could make a ruling on that
24 because, again, no – no one had the information. So what I'm understanding is
25 that that will now be forthcoming to Mr. Waid, it'll be Mr. Waid's determination

1 as to what he determines is trust related expense versus what representation
2 was solely Ms. Ahern's. That's acceptable and that's fine.

3 THE COURT: Okay. Great.

4 MR. POWELL: As long as, again, we're just not making a determination
5 that anything as of right now is coming from –

6 THE COURT: Correct.

7 MR. POWELL: -- the Trust itself. So –

8 THE COURT: Correct. Okay.

9 MR. POWELL: -- with that as a parameter –

10 THE COURT: Okay.

11 MR. POWELL: -- I'm fine with that.

12 THE COURT: All right. So Mr. Semenza, just to bring you up to speed,
13 Marquis Coffing – Marquis Aurbach Coffing who preceded Mr. Lenhard, have
14 been attempting to perfect their lien for some time now, and that was one of
15 the issues was that, because of the time Ms. Ahern was still the Trustee of the
16 Trust, there may be certain things in their bill that were actually done, not on
17 behalf of the Trust, that are probably paid by the Trust and not accountable on
18 her personal representation. So, trying to figure out some way to go through
19 that with redacted billing and confidential information.

20 It sounds like Counsel for the Trustee and Mr. Coffing have worked
21 out an agreeable solution that allows the Trustee to go through and make a
22 determination as to what, if anything, should be paid by the Trust.

23 MR. SEMENZA: And I think that Mr. Lenhard's firm has been
24 representing Ms. Ahern in that matter.

25 MR. COFFING: No, Mr. Lenhard didn't come in until after Ms. Ahern was

1 discharged as Trustee.

2 THE COURT: Correct. Yeah. He began representing her after she was
3 removed.

4 MR. SEMENZA: But the issue with respect to the appropriateness of the
5 billings.

6 THE COURT: Correct. I don't believe Mr. Lenhard took a position on it.

7 MR. COFFING: Well, he did take a position to the extent that he wanted
8 to maintain the claim of privilege as to certain items but --

9 THE COURT: Right. And that's why we had the problem --

10 MR. COFFING: Exactly.

11 THE COURT: -- with redacted billing.

12 MR. COFFING: And that's why I think that that may have resolved itself.

13 THE COURT: Yeah. So, as far as contesting the -- the bill, we were still
14 waiting to find out what it was was going to be apportioned to the Trust versus
15 what it was going to be apportioned to Ms. Ahern.

16 MR. SEMENZA: So that'll obvious go to Ms. Ahern's new attorney prior
17 to your status hearing.

18 THE COURT: What is?

19 MR. SEMENZA: To see whether or not they agree.

20 THE COURT: So I guess that's -- I guess that's a different determination
21 Mister -- Mr. Waid. What was your anticipation as to when you would have --
22 are you going to do a report saying, "having reviewed these bills we think that
23 there's, you know, 10, 20, 30 percent is -- was -- worked for the Trust and --

24 MR. WAID: Well, that is certainly a subject, as outlined in our deposition,
25 questions for her --

1 THE COURT: Uh-huh.

2 MR. WAID: -- we anticipate asking her on Tuesday, would be a review of
3 prior counsel and the allocations of funds that she made to those other firms.
4 And so, I'm -- I'm at -- it's premature to really make a determination at this
5 point. And I -- I guess my -- my concern is, if new counsel's going to be
6 coming in and, as he said, we don't have special appearances, are we in or we
7 out?

8 I'm inclined to ask the Court, given that I still have fiduciary duties
9 to Ms. Ahern --

10 THE COURT: Uh-huh.

11 MR. WAID: -- because she still is a beneficiary even though her interest
12 has been suspended, and she's in contempt of this Court as the Court's
13 indicated. I'm concerned, briefly looking at the letter today, that perhaps an
14 additional course would be to have a guardian ad litem appointed. As this
15 Court's well aware, we've had issues where Adult Protective Services have
16 been called in. They do a physical inspection and they close their case, and
17 that's happened historically.

18 THE COURT: Uh-huh.

19 MR. WAID: I think, given the fact this would be counsel number six, she
20 needs guardian ad litem to really inform this Court of what is truly in her best
21 interest.

22 THE COURT: Uh-huh.

23 MR. WAID: I've thought about that.

24 THE COURT: Well, I think that -- I think that approach needs -- probably
25 needs to be put in writing and --

1 MR. WAID: Okay.

2 THE COURT: -- she probably does need counsel, and she probably does
3 need to be advised because this is -- this is a ongoing problem for us.

4 MR. WAID: I think the record should be very clear and for new counsel's
5 benefit, at the previous hearing two hearings ago, Mr. Lenhard indicated that he
6 had communicated with Ms. Ahern that the settlement had been accepted.

7 THE COURT: Uh-huh.

8 MR. WAID: We were eager --

9 THE COURT: Right.

10 MR. WAID: -- and anxious to get before the Court. We had the Court
11 accommodate and expedite its schedule to do so, and now we have another
12 change. That's why I think a guardian ad litem, to benefit all parties, the Court,
13 me as the Trustee, the other beneficiaries in light of the litigation. I think a
14 guardian ad litem who can meet with her --

15 THE COURT: Uh-huh.

16 MR. WAID: -- assess her circumstances and report to the Court on what
17 they feel is in her best interest would be extremely helpful.

18 MR. GEIST: I believe we'll prepare a Motion for a Guardian Ad Litem,
19 Your Honor.

20 THE COURT: Ah, yes, I think that's appropriate. So at this point in time,
21 the issue is with respect to Marquis Aurbach's lien. That the Court will
22 adjudicate the lien subject to -- and do you want to do that after the first of the
23 year then? A report from the -- from the Trustee that -- on apportionment. On
24 -- is there a percentage of this that is properly apportioned to the Trust? What
25 is that percentage, and then what would -- what would be just representation of

1 Ms. Ahern?

2 MR. COFFING: Correct.

3 MR. WAID: Yes.

4 THE COURT: Okay, so – we'll get that report after the first of the year?

5 MR. COFFING: And I'll circulate it in appropriate order amongst Counsel.

6 THE COURT: Okay. And you know that – that's the point Mr.
7 Semenza's making, is that in the event he accepts representation of Ms. – Ms.
8 Ahern's terms and he accepts the representation of her, that we're going to be
9 able to proceed. I think that his request was that he be advised of what that is.

10 So that's what I'm saying is: Is there going to be some sort of a
11 pleading filed by Mr. Geist or Mr. Moody that says the Trustee's reviewed it,
12 whatever the percentage is, is representation of the Trust. So – so he'll know
13 what that is.

14 MR. COFFING: Understood.

15 THE COURT: He or whoever represents her. Then you'll send over an
16 appropriate order Mister –

17 MR. COFFING: Correct.

18 THE COURT: -- Coffing? Okay. With the exception that it's going to be
19 –

20 MR. COFFING: Understood.

21 THE COURT: -- apportioned and we'll get a date for you in couple – first
22 couple weeks of January?

23 COURT CLERK: January 18th.

24 MR. SEMENZA: Excuse me, January 18th?

25 COURT CLERK: Yes.

1 THE COURT: Okay. All right. January 18th. So moving on then,
2 although as I said, you know, it may be possible to file the first page of Ms.
3 Ahern's fax because that is her specific request is that, in consideration of Mr.
4 Lenhard's Motion to Withdraw to not leave her without counsel, so that's a
5 request she has made. At this point in time she's asked that we – and that
6 may be the best thing to do is just separate the pleading and just attach to file
7 as a document, her ex parte request that we not leave her without counsel and
8 we order the Trustee to pay for new counsel in a timely fashion.

9 The rest of it has the reattachment, the other – like it's like I think
10 13 pages total, has all the additional, you know, the communications, the
11 attorney-client and the information about settlement. So, I mean, that may be
12 the best way to handle it. If that's agreeable maybe that's what – maybe
13 that's what we should do then, because I, I do think we do need to make some
14 sort of a record that she did make this request.

15 MR. GEIST: Uh-huh.

16 THE COURT: So that's I – that's what we'll do.

17 MR. GEIST: I agree, you're right about it.

18 THE COURT: I think that -- that just occurred to me. I think that's the
19 way we can make it. We will attach – we'll detach the first page, file that as
20 her ex parte request that she – she's really opposed Mr. Lenhard's withdrawing,
21 but that she not be left without counsel, and there be an order that her new
22 counsel be paid. And then she's got the attached 11 or 12 pages that have
23 information that we're going to left-side file, because I think it's – a lot of its
24 confidential in one way or another. So that's what we'll do with this – with
25 this document.

1 So there is a request then, Mr. Semenza, in the record that she has
2 made this request that she not be left without counsel. That she be – her
3 Trustee be directed to pay for new counsel in a timely fashion and –

4 MR. SEMENZA: I take it, Your Honor, that there was not a Notice of
5 Motion filed with it also?

6 THE COURT: No, this is all she filed.

7 MR. SEMENZA: All right. Thank, Your Honor.

8 THE COURT: This is what she faxed.

9 MR. SEMENZA: I thought perhaps she had set it for hearing.

10 THE COURT: No, no, it was – this was just filed – fax sent in today for
11 today's hearing. And I think if we separate it that way we can make sure that
12 it's in the record that she made this request. But the rest of it I just – I'm
13 uncomfortable making it part of the record because I think it's largely
14 confidential so.

15 MR. COFFING: Thank you, Your Honor.

16 MS. ELLIS: Thank you very --

17 THE COURT: So her request is that she not be without counsel. We had
18 very limited budget for counsel in the past. Upon request of counsel, I'm not
19 inclined at this point in time to change that. We had issued certain limited
20 amounts. I mean, she is facing a very large – a request for a very large
21 surcharge. And, you know, until we have some accounting and we know what
22 the surcharge is, it's difficult for the Court to make that determination.

23 But you know, Mr. Semenza, if you wish to enter into an agreement
24 with her and want to file something saying you need some sort of a budget,
25 you know, we'll take a look at advancing some funds again, because we've

1 done it in the past but it's upon a request.

2 So, right now I – I am aware of her request. I understand and I
3 agree with her she does need counsel, but at this point in time, as you said,
4 suppose up notice for a hearing. I – we would need something that would tell
5 us, yes, you're going to represent her and you're going to need some sort of
6 retainer. It's -- we've – technically it's not been, it's not been huge, but we
7 have issued, in the past, some advances for her fees.

8 MR. SEMENZA: I'm sure that would be a concern of whomever --

9 THE COURT: Whomever may --

10 MR. SEMENZA: -- would enter an appearance on her behalf, Your Honor.

11 THE COURT: Absolutely. So that -- so that --

12 MR. SEMENZA: I --

13 THE COURT: At this point in time when we don't know who she's going
14 to have as counsel or who they will be --

15 MR. SEMENZA: Correct.

16 THE COURT: -- I don't feel like I could order Mr. Waid to pay anything to
17 anybody, because we don't have an actual appearance. So if there's an
18 appearance of some counsel for her that person can ask. I'm here, I'm
19 requesting this. I'm going to be appearing. I'll take a look at it then. As of
20 right now, I don't know who she would be retaining. I don't know who Mr.
21 Waid would be directed to pay.

22 It's -- I can't do it based on what she's got, but I'm conscious of
23 her request and would consider her request in the future if we know who the
24 attorney is and can come to some sort of understanding as to what that
25 advance would be.

1 MR. GEIST: Your Honor.

2 THE COURT: Okay, so that's -- that's it.

3 MR. GEIST: For -- along those lines, for the record, and for Mr.
4 Semenza's benefit.

5 THE COURT: Right.

6 MR. GEIST: The deposition that's scheduled on Tuesday, we have no
7 intention of continuing that.

8 THE COURT: I'm not going to --

9 MR. GEIST: We expect her to be there. It was properly noticed.

10 THE COURT: I'm not going to interfere with it, yeah.

11 MR. GEIST: Okay.

12 THE COURT: I mean it's -- it's noticed.

13 MR. GEIST: Thank you.

14 THE COURT: And I believe that she was given advanced notice of what
15 the questions were --

16 MR. GEIST: Yes.

17 THE COURT: -- by I -- essentially --

18 MR. GEIST: Through prior counsel.

19 THE COURT: -- it wasn't really a deposition on -- on questions, but she
20 was given the information about the questions.

21 MR. GEIST: Correct. Through prior counsel.

22 THE COURT: All right. Great. So then we'll go on ahead and proceed in
23 the ordinary course.

24 MR. GEIST: Okay.

25 THE COURT: And if somebody wishes to enter an appearance and file a

1 motion asking for some sort of accommodation, that's something an attorney
2 representing her can do. But right now I don't have anything in writing. So,
3 you know, at this point I'm just -- I can't -- I just can't take any other action.

4 MR. SEMENZA: Well, I -- and Your Honor, that's why I'm not making an
5 appearance today and --

6 THE COURT: I understand that, Mr. Semenza.

7 MR. SEMENZA: -- and -- please, I don't want to end up like the Lenhard
8 firm with a 311,000 plus --

9 THE COURT: Yeah.

10 MR. SEMENZA: -- attorney's lien --

11 THE COURT: Uh-huh.

12 MR. SEMENZA: -- and like the Marquis and Aurbach with a hundred and
13 something thousand.

14 THE COURT: Understood.

15 MR. SEMENZA: Eventually when there's no money left then there won't
16 be any case so --

17 THE COURT: Yes, exactly. That's the concern and that's why we
18 thought we were going to resolve it for everybody's benefit so. But certainly, if
19 somebody appears for her and makes the proper motions in writing we can do
20 that. I agree, I understand she needs counsel, but we need to know who that
21 counsel is. I can't order Mr. Waid to pay a fictitious person.

22 MR. SEMENZA: Thank you very much, Your Honor, for your time today.

23 THE COURT: Okay. Thank you all.

24 MS. ELLIS: Thank Your Honor.

25 MR. GEIST: Thank you, Your Honor.

1 THE COURT: I'll look forward to all your orders.

2 MR. WAID: How was your conference?

3 THE COURT: Oh it was great. Yeah, we learned lots of stuff. This is not
4 the – there are more interesting cases out there than even this, who knew? So
5 thank you very much for coming in. We'll –

6 MR. WAID: Happy Thanksgiving.

7 THE COURT: -- have a good holiday and we'll see you whenever you get
8 things noticed. Oh, did we give them a date?

9 COURT CLERK: Yeah.

10 THE COURT: Okay. So we got a date. All right.

11 MR. POWELL: The 18th, Your Honor, I think.

12 THE COURT: Oh, pardon?

13 MR. POWELL: You're talking for this, the 18th?

14 THE COURT: Yeah.

15 MR. POWELL: Yeah, that'll be 9:30 a.m.?

16 THE COURT: Yes, yeah.

17

18 [Proceeding concluded at 10:05 a.m.]

19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/visual recording in the above entitled case to the best of my ability.

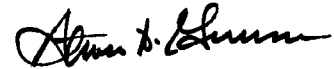
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Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI



CLERK OF THE COURT

1 **ORDG**

2 KIRK B. LENHARD, ESQ., Bar No. 1437

3 klenhard@bhfs.com

4 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

5 100 North City Parkway, Suite 1600

6 Las Vegas, NV 89106-4614

7 Telephone: 702.382.2101

8 Facsimile: 702.382.8135

9 *Attorneys for Eleanor Connell Hartman Ahern*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 In the Matter of

CASE NO.: P-09-066425-T

13 THE W.N. CONNELL AND
14 MARJORIE T. CONNELL LIVING
15 TRUST DATED May 18, 1972, An
16 Inter Vivos Irrevocable Trust

DEPT. NO.: XXVI

**ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL**

Date of Hearing: November 23, 2016

Time of Hearing: 9:30 a.m.

17 Brownstein Hyatt Farber Schreck, LLP's Motion to Withdraw as Counsel for
18 Eleanor Connell Hartman Ahern ("Motion to Withdraw") came on for hearing
19 November 23, 2016. Emily A. Ellis, Esq., appearing on behalf of Eleanor Connell
20 Hartman Ahern; Joseph J. Powell, Esq., appearing on behalf of Ms. Montoya and
21 Ms. Bouvier; Russel J. Geist, Esq., appearing on behalf of Fredrick P. Waid, in his
22 capacity as the acting trustee of The W.N. Connell and Marjorie T. Connell Living
23 Trust, dated May 18, 1972 (the "Trust"); and upon the Court's consideration of the
24 pleadings and papers on file herein, noting no opposition was filed, and good cause
25 appearing therefore,

26 ...

27 ...

28 ...

0181770001\15274010.2

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

1 IT IS HEREBY ORDERED that Brownstein Hyatt Farber Schreck, LLP's
2 Motion to Withdraw as counsel for Eleanor Ahern is GRANTED.

3
4 DATED: December 9, 2016.

5
6 
DISTRICT COURT JUDGE 

7 Respectfully Submitted By:

8
9 BROWNSTEIN HYATT FARBER SCHRECK, LLP

10
11 By: 

12 KIRK B. LENHARD, ESQ., Bar No. 1437

13 klenhard@bhfs.com

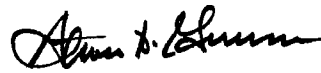
14 100 North City Parkway, Suite 1600

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18 *Attorneys for Eleanor Connell Hartman Ahern*



CLERK OF THE COURT

1 ACCT
Todd L. Moody (5430)
2 Russel J. Geist (9030)
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Las Vegas, Nevada 89145
4 (702) 385-2500
(702) 385-2086 FAX
5 tmoody@hutchlegal.com
rgeist@hutchlegal.com

6
7 *Attorneys for Fredrick P. Waid Court-appointed Trustee*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 In the matter of

Case No.: P-09-066425-T
Dept. 26

11 THE W.N. CONNELL AND MARJORIE T.
12 CONNELL LIVING TRUST DATED May 18,
13 1972, an Inter Vivos Irrevocable Trust.

14 **ACCOUNTING AND REPORT OF TRUST ACTIVITY FROM 2013 TO 2015**

15 Fredrick P. Waid, Successor Trustee of the W.N. Connell and Marjorie T. Connell
16 Living Trust, dated May 18, 1972, (the "Trust"), hereby files this Accounting and Report of
17 Trust Activity from 2013 to 2015 ("Report"). During most of this time period, Eleanor Ahern
18 served as the sole trustee of the Trust and had exclusive access and control of all Trust checking,
19 savings and other accounts. The Successor Trustee filed an Interim Report under seal on July
20 6, 2015.

21 The Court is well aware of the litigation history in this case and a narrative recital is not
22 warranted in this Report. Since the Appointment of the Successor Trustee in April 2015, this
23 Court has issued numerous orders requiring Ms. Ahern to produce records, comply with
24 deposition notices and cooperate with the Successor Trustee's efforts to prepare an accounting
25 for time periods when she served as Trustee. In response to the Court's orders Ms. Ahern has
26 produced, through her various counsel, only limited records primarily consisting of forwarded
27 mail. She did not appear for any scheduled or ordered depositions notwithstanding the findings
28

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1 of the Court regarding fraud and other misconduct pursuant to hearings on the Motion to
2 Enforce the Trust's No Contest Clause.

3 Due to her failure to appear and cooperate as ordered, a significant portion of the
4 transactional history that occurred during Ms. Ahern's tenure as trustee cannot be reconciled or
5 explained. As such, and pursuant to Generally Accepted Accounting Principles (GAAP), the
6 Successor Trustee is unable to this provide the Court with definitive information or explain as
7 to the greatly expanded Trust expenditures, either in dollars spent or to whom those dollars were
8 paid, during the accounting period and Ms. Ahern's tenure as Trustee.

9 For clarification, in years prior to June 2013, the Trust expenditures were generally
10 limited to three categories, including (1) property taxes, (2) liability insurance premiums and (3)
11 limited professional fees for legal or accounting services. All other income/royalties were
12 distributed to the Trust beneficiaries who were individually responsible for any associated tax
13 liabilities. The Trust was designed to eliminate any taxable income at the Trust level with all
14 income passing to the respective 65% beneficiary, the MTC Trust ("MTC"), and the 35%
15 beneficiary, Eleanor Ahern as a lifetime beneficiary of income only.

16 During Ms. Ahern's tenure approximately thirty (30) other companies and/or individuals
17 were paid with Trust funds. (A list of payees and amounts is attached as Exhibit A.) Again, due
18 to Ms. Ahern's failure to answer questions under oath, the rationale and basis for the
19 expenditures remain unanswered and unclear. What is clear is that MTC did not receive a single
20 distribution of royalty income from the Trust between June 2013 and April 2015. Only after Ms.
21 Ahern was removed as Trustee by the Court did MTC once again begin receiving its share of
22 distributions. A significant number of expenses that were authorized by Ms. Ahern appear to
23 have provided no benefit to the Trust and cannot be deemed appropriate, deductible business
24 expenses as defined and permitted by the Internal Revenue Code.

25 After reviewing available records from the Internal Revenue Service, various banks, oil
26 and gas producers, common royalty recipients (*i.e.*, the Miller family, which shares an equivalent
27 25% royalty interest as the Trust) and partial reconciliations completed by the accounting firm
28

1 of Gammet & King CPAs, the Successor Trustee prepared the chart attached as Exhibit B, which
2 sets forth the best available basis for calculation of royalties not paid to the MTC Trust, as
3 required by the terms of the Trust and as determined by this Court's previous findings and
4 orders.

5 MTC should have received royalty payments of \$481,010 for 2013, \$2,028,134 for 2014
6 and \$1,447,406 for 2015, totaling \$3,956,550. MTC received for the three (3) year period a total
7 of \$2,214,497, with \$1,914,622 of the amount being paid after Ms. Ahern was removed as
8 Trustee. The total undistributed royalties for the period is \$1,742,053.

9 The Successor Trustee takes no position as to the Court's imposition of damages relating
10 to the conduct of Ms. Ahern. The Trustee has ongoing fiduciary duties to Ms. Ahern,
11 notwithstanding her interest being temporarily suspended. Additionally, the Successor Trustee
12 continues his efforts to recover certain tax payments made to the U.S. Treasury as a result of Ms.
13 Ahern's failure to comply with and administer the Trust according to its terms and intent. It is
14 anticipated that amended tax returns and refunds will be resolved and closed by mid-2017. As
15 of the filing of this Report, Ms. Ahern has not identified or confirmed any successor counsel to
16 represent her in this matter.

17 On Saturday, January 21, 2017, the Successor Trustee coordinated and participated with
18 the Mesquite Police Department in a "well check" of Ms. Ahern. After inspecting her residence
19 and interviewing her, the responding officer determined that Ms. Ahern had sufficient food,
20 clothing and shelter and appeared to be in good health based on his observations and Ms.
21 Ahern's declaration to the officer. It should be noted that the last mailing address provided by
22 Ms. Ahern's former counsel is not the address where Ms. Ahern currently resides. She currently

23 ///

25 ///

27 ///

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1 resides at 111 Paradise Pkwy., Mesquite, Nevada, 89027.

2 Dated this February day of ~~January~~, 2017.

3 HUTCHISON & STEFFEN

4 

5 Todd L. Moody (5430)

6 Russel J. Geist (9030)

7 10080 W. Alta Dr., Ste 200

8 Las Vegas, NV 89145

9 Phone: (702) 385-2500

10 tmoody@hutchlegal.com

11 rgeist@hutchlegal.com

12 Attorneys for Fredrick P. Waid

13 Court-appointed Trustee

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN and that on this 1st day of February, 2017, I caused a true and correct copy of the above and foregoing **ACCOUNTING AND REPORT OF TRUST ACTIVITY FROM 2013 TO 2015** to be served as follows:

☒ [X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☒ [X] pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

☐ [] Pursuant to EDCR 7.26, to be sent via facsimile; and/or

☐ [] to be hand-delivered;

to the persons listed below at the address and/or facsimile number indicated below:

Via U.S. Mail Only:

Eleanor Ahern
111 Paradise Pkwy.
Mesquite, NV 89027

Via Wiznet Only:

Joseph J. Powell, Esq.
The Rushforth Firm
1707 Village Center Circle, Ste. 150
Las Vegas, NV 89134
*Attorneys for Kathryn A. Bouvier and
Jacqueline M. Montoya*

Via Wiznet Only:

Daley A. Hayes, Esq.
Liane K. Wakayama, Esq.
Candice E. Rinka, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

Via U.S. Mail Only:

Eleanor Ahern
400 Paradise Pkwy., Unit 111
Mesquite, NV 89027

Via Wiznet Only:

Kirk Lenhard, Esq.
Tamara Beatty Peterson, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite #1600
Las Vegas, NV 89106


An Employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT A

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

11:57 AM

02/01/17

WN CONNELL AND MARJORIE T CONNELL 1972 TRUST
CONNELL TRUST ACCTS #1254900135/8737649197/1985753274
 January 2013 through December 2015

Type	Date	Memo	Account	Split	Amount
AMERICAN EXPRESS					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-5,000.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-10,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00
AMERICAN PATROLS					
Check	03/05/2014	RE: AIRAERI...	CONNELL TRUST #1985753274	Unknown Expe...	-1,000.00
BANK OF AMERICA					
Check	03/05/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-2,000.00
BARBARA SHORTZ					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Counseling Ex...	-2,301.40
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Counseling Ex...	-3,000.00
Check	10/17/2014	CASH / CSH ...	CONNELL TRUST #1985753274	Counseling Ex...	-3,000.00
Check	12/19/2014	REF #9166	CONNELL TRUST #1254900135	Counseling Ex...	-8,600.00
BREATH OF LIFE SYSTEMS					
Check	12/19/2014	REF #9167	CONNELL TRUST #1254900135	Unknown Expe...	-5,198.46
BRENNAN LEGAL COUNSEL					
Check	05/13/2013	CSH CK #745...	CONNELL TRUST #8737649197	Legal Expense	-2,000.00
BURKS SECURITY					
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Security Expen...	-30,400.00
CENTURY LINK					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Telephone Exp...	-1,000.00
CIRRUS AVIATION SERVICES					
Check	03/17/2014		CONNELL TRUST #1985753274	Airline Expense	-23,160.60
Check	07/21/2014	CSH CK #674...	CONNELL TRUST #8737649197	Airline Expense	-7,709.91
CITY OF LAS VEGAS SEWER SERVICES					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Utilities Expense	-612.00
CLARK COUNTY ASSESSOR					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Taxes - Property	-7,000.00
CONNELL FAMILY FOUNDATION					
Check	05/08/2013	(NOT USED ...	CONNELL TRUST #8737649197	Unknown Expe...	-27,449.54
COX COMMUNICATIONS					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Cable Expense	-800.00
CURT BAGGETT					
Check	08/20/2013	CSH CK #745...	CONNELL TRUST #1985753274	Unknown Expe...	-1,000.00
Check	02/14/2014	RE: W/M CO...	CONNELL TRUST #8737649197	Unknown Expe...	-7,000.00
DAREL BURKS					
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Security Expen...	-3,000.00
Check	12/19/2014	REF #9164	CONNELL TRUST #1254900135	Security Expen...	-2,000.00
DAVID MANN					
Check	11/14/2014	RE: REIMBU...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00
DCP MIDSTREAM					
Deposit	08/07/2013	CK #818622	CONNELL TRUST #8737649197	Gas/Oil Leases	62.54
DEE DETAILING CLEANING					
Check	12/31/2014	CSH CK #24...	CONNELL TRUST #1985753274	Janitorial Expe...	-550.00
DOUG EDWARDS					
Check	01/26/2015	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-10,000.00
ELEANOR M AHERN					
Check	03/06/2013	CSH CK #745...	CONNELL TRUST #8737649197	ELEANOR M A...	-17,548.22
Check	03/06/2013	LESS 3899.5...	CONNELL TRUST #8737649197	(UNKNOWN) ...	-17,548.22
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-2,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	(UNKNOWN) #...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	ELEANOR M.A...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD J...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	(UNKNOWN) ...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-5,073.80
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-7,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-11,000.00
Check	03/23/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-100,000.00
EXPERT JET CHARTER					
Check	09/06/2014	CSH CK #678...	CONNELL TRUST #8737649197	Airline Expense	-53,003.90
FORENSIC SPECIALIST LIMITED					
Check	10/27/2014	REF #8699	CONNELL TRUST #1254900135	Unknown Expe...	-9,613.94
GAMMETT AND KING CPA'S					
Check	02/24/2014	RE: W/M CO...	CONNELL TRUST #1985753274	Accounting Ex...	-5,000.00
HANDWRITING LLC					
Check	12/31/2014	RE: CURT BA...	CONNELL TRUST #1985753274	Unknown Expe...	-5,477.00
INTERNAL REVENUE SERVICE					

11:57 AM

02/01/17

WN CONNELL AND MARJORIE T CONNELL 1972 TRUST

CONNELL TRUST ACCTS #1254900135/8737649197/1985753274

January 2013 through December 2015

Type	Date	Memo	Account	Split	Amount
Check	12/29/2014	CSH CK #241...	CONNELL TRUST #1985753274	Income Taxes	-55,000.00
JAMES MANN					
Check	10/24/2014	REF #3765	CONNELL TRUST #1254900135	Unknown Expe...	-125,000.00
JASON COLLINS					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	07/11/2014	OVERPD BY ...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	08/04/2014	CSH CK #241...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-22,000.00
Check	12/19/2014	REF #9165	CONNELL TRUST #1254900135	Unknown Expe...	-9,250.00
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-4,400.00
Check	01/31/2015	CSH CK #718...	CONNELL TRUST #1985753274	Unknown Expe...	-7,600.00
Check	02/18/2015	REF #1144	CONNELL TRUST #1985753274	Unknown Expe...	-6,600.00
JEFFREY BURR LAW FIRM					
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Legal Expense	-50,000.00
Check	06/03/2014	REF #5032	CONNELL TRUST #8737649197	Legal Expense	-60,000.00
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-125,000.00
JEFFREY JOHNSTON & ASSOCIATES					
Check	06/10/2013	RE: LEGAL F...	CONNELL TRUST #8737649197	Legal Expense	-7,000.00
JET PARTNERS WORLDWIDE					
Check	11/06/2014	CSH CK #241...	CONNELL TRUST #1985753274	Airline Expense	-25,800.00
JOHNSTON & ASSOCIATES					
Check	06/05/2013	CSH CK #649...	CONNELL TRUST #8737649197	Legal Expense	-5,000.00
Check	08/07/2013	CONNELL TR...	CONNELL TRUST #8737649197	Legal Expense	-20,000.00
Check	08/15/2013	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-50,000.00
KINGDOM TITLE SOLUTIONS					
Check	12/29/2014	WIRE	CONNELL TRUST #1985753274	Unknown Expe...	-75,000.00
LARRY PRUCKA					
Check	04/07/2014	CPA / CSH C...	CONNELL TRUST #8737649197	Accounting Ex...	-4,000.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Accounting Ex...	-2,000.00
LAURIE HOELTZEL					
Check	07/11/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-740.00
LISA JOHNSON					
Check	06/10/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-2,000.00
LYNCH, CHAPPELL & ALSUP					
Check	01/10/2013	RE: Legal Fe...	CONNELL TRUST #8737649197	Legal Expense	-4,000.00
Check	05/13/2013	RE: HARPER...	CONNELL TRUST #8737649197	Legal Expense	-5,000.00
MARGARET WURDELLA					
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Unknown Expe...	-3,500.00
MARGARET WURDELLA LIVING TRUST					
Check	02/27/2015	CSH CK #848...	CONNELL TRUST #1985753274	Unknown Expe...	-1,750.00
MARQUIS AURBACH COFFING					
Check	11/24/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-15,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-21,782.28
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-21,000.00
Check	01/26/2015	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-30,394.22
Check	02/20/2015	WIRE	CONNELL TRUST #1985753274	Legal Expense	-75,000.00
MCNAIR & ASSOCIATES					
Check	05/13/2013	CSH CK #745...	CONNELL TRUST #8737649197	Accounting Ex...	-1,200.00
Check	08/07/2013	CSH CK #745...	CONNELL TRUST #8737649197	Accounting Ex...	-900.00
Check	07/03/2014	RE: CPA / CS...	CONNELL TRUST #8737649197	Accounting Ex...	-2,144.18
MTC LIVING TRUST					
Check	02/15/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-47,603.71
Check	05/09/2013	RE: LESS W...	CONNELL TRUST #8737649197	Unknown Expe...	-44,477.73
Check	06/11/2013	RE: GIFT 201...	CONNELL TRUST #8737649197	Unknown Expe...	-37,000.00
NEVADA POWER					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Utilities Expense	-1,000.00
OMNI HOTEL AND RESORTS					
Check	07/03/2014	REF: FORT ...	CONNELL TRUST #8737649197	Hotel Expense	-7,000.00
Check	07/11/2014	CSH CK #674...	CONNELL TRUST #8737649197	Hotel Expense	-6,500.00
PROPERTY SERVICES					
Check	10/27/2014	CSH CK #241...	CONNELL TRUST #1254900135	Rent Expense	-8,600.00
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Rent Expense	-6,000.00
PRUDENTIAL AMERICANA GRP					
Check	03/05/2014	RE: CONNEL...	CONNELL TRUST #1985753274	Rent Expense	-2,250.00
REAL ESTATE SERVICES					
Check	03/05/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00

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11:57 AM

02/01/17

WN CONNELL AND MARJORIE T CONNELL 1972 TRUST
CONNELL TRUST ACCTS #1254900135/8737649197/1985753274
 January 2013 through December 2015

Type	Date	Memo	Account	Split	Amount
Check	04/23/2014	CSH CK #241...	CONNELL TRUST #8737649197	Unknown Expe...	-90,000.00
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Unknown Expe...	-50,000.00
Check	07/21/2014	CSH CK #574...	CONNELL TRUST #8737649197	Unknown Expe...	-150,000.00
REPUBLIC SERVICES					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Trash Expense	-420.00
ROBINSON REALTY					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-2,500.00
RYAN SCHARAR					
Check	08/20/2013	REF #2561	CONNELL TRUST #1985753274	Legal Expense	-10,000.00
Check	08/20/2013	RE: ELEANO...	CONNELL TRUST #1985753274	Legal Expense	-20,000.00
SHAUNA BRENNAN					
Check	01/10/2013	RE: Legal Fe...	CONNELL TRUST #8737649197	Legal Expense	-5,000.00
SHERRY DOBER					
Check	06/10/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-1,000.00
SHORTZ CONSULTING					
Check	08/15/2013	REF #5534	CONNELL TRUST #1985753274	AHERN/POD ...	-35,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Counseling Ex...	-31,200.00
STAN CRAWFORD ESQUIRE					
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Legal Expense	-2,000.00
STERLING CLARK					
Check	11/24/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-500.00
T MOBILE					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Cellular Expense	-1,000.00
TONY DAVE & ASSOCIATES					
Check	10/27/2014	RE: CONSUL...	CONNELL TRUST #1254900135	Unknown Expe...	-5,000.00
UPTON COUNTY APPRAISAL DISTRICT					
Check	02/25/2014	RE: 2013 TA...	CONNELL TRUST #1985753274	Taxes - Property	-3,199.06
Check	12/26/2014	RE: 2014 TA...	CONNELL TRUST #1985753274	Taxes - Property	-65,000.00
Deposit	02/28/2015	Overpayment ...	CONNELL TRUST #1254900135	Taxes - Property	25,799.78
W/M CONNELL TRUST					
Check	04/09/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-45,336.10
Check	02/18/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-1,287,580.85
Check	03/23/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-500,000.00
WATTS BUSINESS SERVICES					
Check	08/07/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-500.00
WELLS FARGO					
Check	09/11/2013	MASTERCAR...	CONNELL TRUST #1985753274	Unknown Expe...	-25,000.00
Check	04/07/2014	RE: MASTER...	CONNELL TRUST #8737649197	Unknown Expe...	-10,000.00

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EXHIBIT PAGE ONLY

EXHIBIT B

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST

Royalty Calculations	2013	2014	2015	TOTALS
Connell Trust royalty income	\$740,015	\$3,120,206	\$2,226,779	\$6,087,000
Miller royalty income	<u>-\$1,319,276</u>	<u>-\$2,585,096</u>	<u>-\$2,090,389</u>	<u>-\$5,994,761</u>
differential	-\$579,261	\$535,110	\$136,390	\$92,239
65% of Connell income	\$481,010	\$2,028,134	\$1,447,406	\$3,956,550
Royalties received by MTC	<u>\$299,875</u>	<u>\$0</u>	<u>\$1,914,622</u>	<u>\$2,214,497</u>
Unpaid royalties due MTC	\$181,135	\$2,028,134	-\$467,216	\$1,742,053

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

February 08, 2017

P-09-066425-T

In the Matter of the Trust of:

The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972

February 08, 2017 3:10 PM

Minute Order

HEARD BY: Sturman, Gloria

COURTROOM: Chambers

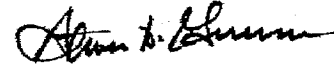
COURT CLERK: Tena Jolley

PARTIES: None. Minute Order Only - no hearing held.

JOURNAL ENTRIES

- Pursuant to Eleanor Ahern's ex parte request for an order releasing funds, the Court hereby grants the request and orders that the Trustee, Fred Waid, shall release funds from Ms. Ahern's share of the Trust directly to attorney Lawrence Semenza, Esq., for his reasonable attorney's fees incurred for his representation of Ms. Ahern at the February 9th and 10th evidentiary hearing.

RTRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

In re the Matter of:

CASE NO. P-066425

THE W.N. CONNELL AND
MARJORIE T. CONNELL
LIVING TRUST MAY 18, 1972

DEPT. XX

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 9, 2017

**RECORDER'S TRANSCRIPT
EVIDENTIARY HEARING**

APPEARANCES:

For Jacqueline Montoya	JOSEPH POWELL
& Kathryn Bouvier:	DANIEL P. KIEFER
	The Rushforth Firm, PLLC
For the Trustee:	TODD L. MOODY
	FREDRICK P. WAID
	Hutchison & Steffen, LLC

RECORDED BY: KERRY ESPARZA

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Fredrick Waid	20

EXHIBITSPageTrustee's:

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1 THURSDAY, FEBRUARY 9, 2017 AT 10:17 A.M.

2

3 THE COURT: Will everybody make appearances and we'll
4 discuss what we're going to be doing today.

5 MR. POWELL: Good morning, Your Honor. Joey Powell and
6 Daniel Kiefer appearing on behalf of Jacqueline Montoya and
7 Kathryn Bouvier who are present in the courtroom today.

8 MR. MOODY: Good morning, Your Honor. Todd Moody, Bar
9 Number 5430 for the Court-Appointed Trustee Fred Waid who is
10 present.

11 THE COURT: All right. So pursuant to some communication
12 the Court received from Ms. Ahern, we have made an effort to
13 have her be able to join us by a video link. I think that she
14 has also requested and was authorized a disbursement of funds
15 for Counsel. I don't know if that was done. I see Mr.
16 Semenza is here. I don't know if he's prepared to make an
17 appearance or not.

18 Counsel, you --

19 MR. WAID: We spoke, Your Honor, but I think Mr. Semenza
20 would like to address the Court on that.

21 THE COURT: Okay. All right. So I can see Ms. Connell
22 on this little screen but not on the big screen, so what's
23 going on?

24 THE COURT RECORDER: When we're brought in, Judge --

25 THE COURT: Okay.

1 THE COURT RECORDER: She can -

2 THE COURT: Okay.

3 THE COURT RECORDER: -- see her, but she cannot hear us.

4 THE COURT: All right. Great.

5 So, Mr. Semenza?

6 MR. SEMENZA: Good morning, Your Honor. Last evening I
7 received a copy of the Court's Minute Order that indicated
8 that, "Pursuant to Eleanor Ahern's ex-parte request for an
9 order releasing funds" --

10 THE COURT: Uh-huh.

11 MR. SEMENZA: -- "the Court hereby grants the request and
12 orders that the Trustee, Mr. Waid, shall release funds from
13 Ms. Ahern's share of the Trust directly to Attorney Lawrence
14 J. Semenza, Esquire" -- excuse me, I added the J, which isn't
15 in your order.

16 THE COURT: Okay.

17 MR. SEMENZA: -- "for his reasonable attorneys fees
18 incurred for his representation of Ms. Ahern at the February
19 9th and 10th evidentiary hearing.

20 THE COURT: Yes.

21 MR. SEMENZA: I think the last time I appeared before
22 you, Your Honor, I did not enter an appearance --

23 THE COURT: You did not --

24 MR. SEMENZA: -- on Ms. Ahern's behalf. And, in fact, I
25 think we discussed the fact that we no longer have special

1 appearances.

2 THE COURT: Yes.

3 MR. SEMENZA: And --

4 THE COURT: You have not made any appearance.

5 MR. SEMENZA: I have not made an appearance, and I
6 certainly cannot make an appearance under the terms that have
7 been specified in the Court's order.

8 Ms. Ahern, as you indicated last time, Your Honor,
9 needs counsel, and apparently she does not have sufficient
10 funds with which to engage counsel, whether it's me or someone
11 else. And to me, for me to enter an appearance today and for
12 tomorrow, assuming that the hearing were to continue that --
13 and then I don't know whether I would have to move the Court
14 to withdraw since I -- in for a pound, in for a penny,
15 whatever. I cannot do that. It would be malpractice for me
16 to step into this for a hearing this morning, Your Honor, and
17 I cannot do so.

18 THE COURT: Okay. So you're respectfully declining to
19 appear.

20 MR. SEMENZA: I am, Your Honor.

21 THE COURT: Okay. That's understandable. Have you
22 communicated with Ms. Ahern that you're not going to be able
23 to appear for her?

24 MR. SEMENZA: I have not, Your Honor, because I didn't
25 receive the Court's order until this morning.

1 THE COURT: Okay. All right. Well, so she can't hear
2 this yet?

3 THE COURT RECORDER: No.

4 THE COURT: Okay.

5 THE COURT RECORDER: I was told she can't, Judge.

6 THE COURT: Okay. All right. Well, I think that we
7 probably at some point need to get her on the link, advise her
8 that she's going to need to go forward, unrepresented by
9 counsel, because even -- it's not just a question of paying
10 your fees, it's that, you know, she didn't request this until
11 - I don't know, was it --

12 MR. MOODY: Your Honor.

13 THE COURT: -- Tuesday or something? Yeah.

14 MR. MOODY: I hate to interrupt. I just want to point
15 something out.

16 THE COURT: Yeah.

17 MR. MOODY: Immediately after receiving the Court's order
18 yesterday, which came in, I don't know, around 3:40 -

19 THE COURT: Uh-huh.

20 MR. MOODY: -- yesterday. Mr. Waid and I called Mr.
21 Semenza to let him know about the Court's order. So I
22 understand that while he may not have seen the court order
23 either until last night or maybe even this morning, he was
24 fully aware, and we did that purposely so that this would not
25 be a surprise to him, and so that -

1 THE COURT: Right. Yeah.

2 MR. MOODY: -- he would have sufficient time --

3 THE COURT: And he is here.

4 MR. MOODY: -- to speak with Ms. Ahern.

5 THE COURT: Right.

6 MR. MOODY: I just wanted to clarify.

7 THE COURT: And, and so we probably do need to advise her
8 of that. You know, we're going forward. So, you know, she
9 did ask for counsel. We tried to do what we could to
10 accommodate her. I, you know, I did not know if she had
11 talked to you or not talked to you, in advance, so that you
12 would know what she was asking the Court to do. So I had no
13 way of knowing if you were prepared to do what she requested.
14 You know, we accommodated the specific things she requested,
15 which was to release funds. So --

16 MR. SEMENZA: Well, I, I understand that, Your Honor, but
17 I don't believe that was what she had requested. That I --
18 that the Court release funds for today's hearing and
19 tomorrow's hearing. I don't believe that was her request,
20 Your Honor. I believe that she requested funds to be expended
21 to engage a lawyer, whether it was me or someone else, not
22 just for this hearing, Your Honor.

23 THE COURT: I think it was that. I think that was. I
24 don't recall her letter specifically. So -- she -- I don't
25 know if she copied you in the letter that she sent, but she

1 did send a letter. So, I think at this point in time we
2 probably need to advise her that you are not able to, under
3 the circumstances, and in good conscience, appear for her
4 today. So, you know, we tried to accommodate the specific
5 request she made, got her here on the video link per her
6 request. So we can proceed. And --

7 MR. SEMENZA: May I sit in the audience, Your Honor?

8 THE COURT: Certainly. And we will advise --

9 MR. SEMENZA: Thank you.

10 THE COURT: -- Ms. Ahern that you have come to court to
11 advise the Court that you cannot -- let's see. Ron, can you
12 ask Linda for, if she's got it, Ms. Ahern's letter?

13 MR. SEMENZA: Excuse me, Your Honor.

14 THE COURT: Mr. Semenza. We appreciate your presence,
15 Mr. Semenza.

16 MR. SEMENZA: Thank you, Your Honor.

17 MR. MOODY: Judge, can I raise one issue --

18 THE COURT: Yes.

19 MR. MOODY: -- in light of the colloquy that we just had
20 with Mr. Semenza.

21 THE COURT: Okay.

22 MR. MOODY: Judge, I expect that some of the testimony
23 that will come out today will not only involve sensitive
24 financial information, but some of it may have to do with at
25 least two documents that have previously been filed under

1 seal. So Mr. Waid does have some concerns about Mr. Semenza
2 remaining in the courtroom if he has not entered an appearance
3 for --

4 THE COURT: Understood.

5 MR. MOODY: -- Eleanor Ahern. Just want to bring that to
6 the Court's attention.

7 THE COURT: And so, to the extent that there's ever a
8 question of confidential information that has not been
9 disclosed to non-parties, then I'm sure Mr. Semenza would
10 understand if he was --

11 THE MARSHAL: I just went to the clerk's office to see if
12 it's in the basket.

13 THE COURT: Okay. Never mind. Yeah. Okay. Thanks.
14 All right.

15 MR. KIEFER: And then I guess I would just -- I would
16 piggyback on that same objection, Your Honor --

17 THE COURT: Okay.

18 MR. KIEFER: -- and just put it on the record.

19 THE COURT: Great. Well --

20 MR. KIEFER: I guess I'm confused as well, though, is --
21 is he going to ask for compensation for listening in today but
22 not representing her?

23 THE COURT: It's not a problem for me right now.

24 So I think at this point in time we need to get Ms.
25 Ahern's line opened up so she knows what's going on here, so

1 we can discuss the schedule.

2 MS. AHERN: Hi.

3 THE COURT: I know that she has indicated she may need to
4 take frequent breaks, so that's okay. I have something I have
5 to do. I have to be over at the federal building, and under
6 the circumstances today, it's going to take a little longer to
7 get in. This is the first day of the Bundy trial. So we're
8 going to be taking a break from 11:30 to 1:30, a longer lunch
9 break than we normally would to accommodate going over there
10 for that thing at noon, so just an FYI. So we need to get her
11 on the line so she knows what she -- what we're doing.

12 THE COURT: You can open that up.

13 MR. SEMENZA: Your Honor, if I could be excused? I would
14 appreciate it.

15 THE COURT: Okay. If you give us just one minute we're
16 going to get Ms. Ahern on the line and advise her that you,
17 you came.

18 Good morning. This is Judge Sturman. [Echo heard].
19 Can you hear me, Ms. Ahern?

20 MS. AHERN: Yes, I can.

21 THE COURT: Okay. All right. Ms. Ahern, in leading up
22 to today, the Court did receive a letter from you indicating
23 that you wanted counsel today and requesting that the Court
24 authorize attorney's fees for -- the attorney you mentioned
25 was Mr. Semenza. And that also indicating that you were not

1 going to be able to travel down here from Mesquite for health
2 and financial reasons. So we've accommodated your request to
3 appear by video conference. And, additionally, the Trustee
4 authorized the release of funds for Mr. Semenza.

5 You should know that Mr. Semenza is here in court.
6 He has indicated to the Court that, as a matter of, I guess,
7 legal ethics, he does not believe that he has had an
8 opportunity to prepare to represent you in this hearing and
9 cannot take on your representation. He has never appeared in
10 this case as counsel for you, and he has respectfully declined
11 to do so for the purposes of this hearing today. He's -- are
12 you aware of that?

13 MS. AHERN: I just now heard you talk about it.

14 THE COURT: Okay. All right. So Mr. Semenza has asked
15 to be excused. He does not intend to remain. The -- this
16 particular hearing does involve a lot of confidential
17 financial data that is sealed and not open to the public. So
18 as a -- as he has not appeared in the case, he would not be
19 able to say for certain aspects of the trial that are -- deal
20 with confidential financial information, not to be shared with
21 the public. So he was going to have to leave anyway, so he
22 has asked that he be excused now.

23 So given the fact that he has stated his regrets
24 that he is unable to prepare for and be here today since he
25 didn't find out until yesterday afternoon that, you know, fees

1 would be released per your request, he just can't do it, and
2 certainly I cannot force him to appear for you. So we're
3 ready to proceed. We'll excuse Mr. Semenza and appreciate the
4 fact that he came to court to explain why, despite the funds
5 being released, he's not able to take on this representation
6 on such short notice, with no file and no time for
7 preparation.

8 MR. SEMENZA: Thank you very much, Your Honor.

9 THE COURT: So Mr. Semenza is excused, and we're
10 otherwise ready to start the hearing today. As we discussed,
11 you had requested that you be given opportunities to take
12 breaks. I see you've raised your hand. So, yes, Ms. Ahern.

13 MS. AHERN: Since I am not represented by counsel, I will
14 not be speaking.

15 THE COURT: Okay. That's understood. So and I know that
16 you have indicated that you may need to take frequent breaks,
17 and I see you've raised your hand again.

18 MS. AHERN: I would like a continuance.

19 THE COURT: That's denied. You have indicated to my
20 staff that you may need to take frequent breaks. Please feel
21 free to let us -- when you need to take -- know when you need
22 to take a break. We are going to take a lunch break that's a
23 little longer than normal today as I have something to do over
24 the lunch hour, and so, in order to get to the federal
25 courthouse, which has a lot of security today, I will need a

1 longer lunch break than normal. We'll be taking a break from
2 11:30 to 1:30 just so you can plan for that. But if you need
3 a break prior to that, just let us know.

4 I'll let the people who are present in court
5 identify themselves so you know who's here in the courtroom.

6 MR. POWELL: Joey Powell.

7 MR. KIEFER: And Daniel Kiefer.

8 MR. MOODY: Todd Moody for Fred Waid.

9 Judge, can I also ask that Ms. Ahern identify anyone
10 else that may be on her end either by attorneys or otherwise?

11 THE COURT: Okay. Thank you.

12 So, Ms. Ahern, the parties who are present, as you
13 may have heard, are counsel for the moving parties. That's
14 Ms. Montoya and Ms. Bouvier. They're present in court, their
15 attorneys are present in court. The Successor Trustee Mr.
16 Waid's present, along with his Attorney Mr. Moody.

17 Because, as I mentioned earlier, we have
18 confidential information being discussed today, that the
19 agreement was it would only be disclosed to people who have
20 signed a Confidentiality Agreement. That counsel have asked,
21 who is physically present with you at your end of the video
22 link?

23 MS. AHERN: No one.

24 THE COURT: Okay. So it's just yourself. All right.

25 MS. AHERN: Yes.

1 THE COURT: Thank you very much.

2 THE COURT: All right. We appreciate that. Thank you.

3 One of the issues that was pending, the hearing today, and
4 that I have just finished the decision and order on, is a
5 request of Marquis, Aurbach and Coffing to adjudicate their
6 attorney lien. I have a decision ready to go that'll be filed
7 today.

8 The Trustee had objected to this for two reasons:

9 "One was, while nobody has disputed the amount
10 of work done by Marquis, Aurbach or their fees, or
11 their qualifications, or any of those issues, the
12 Trustee did raise two issues with the Court. The
13 first of those was -- well, three. The first of
14 those was that the lien could not be perfected
15 because there was nothing for it to attach to.

16 The second was that the lien should attach only
17 to Eleanor's beneficial interest as opposed to the
18 Trust as a whole, because the efforts were not done
19 for the Trust but rather for Ms. Ahern's benefit.

20 And finally, that the spendthrift provisions of
21 the Trust would be violated if the lien attached to
22 Ms. Ahern's beneficial interest."

23 I'll tell you what I've ruled, it's a long decision.

24 The --

25 "I find that the attorney's fee lien was

1 properly perfected. The issue that the lien cannot
2 attach to proceeds because none were quote,
3 'recovered', I found that under the *Argentina*
4 *Consolidated Mining v. Jolley Urga* case, which says
5 you have to have something it attaches to. You
6 can't just have a defense verdict and have -- and
7 then seek an attorney - a attorney lien, because it
8 doesn't attach to anything.

9 I don't think that's the situation here. Ms.
10 Ahern has submitted herself to the jurisdiction of
11 the Court as a party. We also have jurisdiction
12 over the law firm having appeared as counsel in this
13 action.

14 The charging lien does not attach where the
15 party did not file an affirmative claim. Rather, it
16 attaches to the tangible fruits of the attorney
17 services. And here, I believe there were tangible
18 fruits of the attorney's services that it could
19 attach to.

20 Ms. Ahern did file counter-petitions seeking to
21 confirm not only her claim to the disputed 65
22 percent, but also enforcement of the no-contest
23 clause against Jacqueline and Kathryn. Further, she
24 has defended against the charges -- the movant's
25 claim that the no-contest clause should be enforced

1 against her disinheriting her.

2 So I believe that the fees that were incurred
3 by Marquis Aurbach arise in their defense of these
4 claims and therefore -- and since they were
5 successful in defeating a Settlement Agreement that
6 might have affected and saved us all this
7 litigation, there is something for her -- their lien
8 to attach to. The charging lien only has priority
9 over other liens."

10 I'm not going to take your question right now, Ms.
11 Ahern. You have to wait for me to finish.

12 "A charging lien may have priority over other
13 liens if notice is perfected before a settlement or
14 judgment. *Golightly versus Vannah at - Golightly &*
15 *Vannah versus TJ_Allen, 372 P.3d 103, 216.*
16 Attorneys may not perfect an attorney's lien after
17 settlement is reached, but before -- may perfect
18 their attorney's fee lien after a settlement is
19 reached, but before the funds are received.

20 And here, again, Marquis Aurbach successfully
21 defeated enforcement of a Settlement Agreement
22 disputed by Eleanor, and the litigation has
23 continued endlessly, and the amounts -- as to the
24 amounts to be charged for Breach of Fiduciary Duty.

25 So this lien may attach to the sums

1 affirmatively defending and/or claiming, but I don't
2 think it has priority because it would -- they did
3 not perfect it at the time of their withdrawal.
4 They have waited until now to perfect it. So I
5 think their priority would be that it would come
6 after everything else.

7 Then, again, the successor objects to the lien
8 attaching to the beneficial interest as in violation
9 of the spendthrift provision of the Trust. The
10 unique nature of an attorney's charging lien allows
11 a judgment to be entered against the affirmative
12 recovery sought by a party in litigation.

13 No distinction is made in the cases
14 interpreting NRS 18.015, which would suggest that a
15 party who is affirmatively defending the right to
16 continue to receive trust funds would lose their
17 defense or would have a defense to paying attorneys
18 simply by virtue of the fact that the Trust
19 contained a spendthrift clause. I don't think -- I
20 think that's bad public policy.

21 To read such a defense into NRS 18.015 would
22 place attorneys who take on trust litigation at a
23 disadvantage, an outcome which we cannot believe the
24 Legislature intended. So I don't think we are
25 violating the spendthrift clause.

1 The Court has considered their lien, all the
2 factors are present, and the *Brunzell*. They have
3 some problems with documenting their costs, which I
4 reference here because I think there are some costs
5 not properly documented.

6 So I'm going to grant their Motion for
7 attorney's lien. Fees are awarded in their
8 entirety. Costs are awarded in accordance with
9 *Cadle v. Woods Erickson*. The lien is a judgment
10 against Eleanor's beneficial interest in the trust
11 only. So I'll sign that order. That'll be entered
12 today."

13 Yes, Ms. Ahern.

14 MS. AHERN: I would request the DVD because I cannot hear
15 you. You speak too fast --

16 THE COURT: Okay. No problem.

17 MS. AHERN: -- and your words all run together.

18 THE COURT: All right. We will -- we'll make sure that
19 that gets done. You'll get a copy of the DVD. Kerry will
20 send it to you.

21 MS. AHERN: For no cost.

22 THE COURT: Okay. All right. We'll send that to you.
23 Kerry, are -- do we have a in forma pauperis order on
24 this one?

25 THE COURT RECORDER: I'll double-check, Judge, I can do

1 that in one second.

2 THE COURT: Okay.

3 MS. AHERN: I have to go to the bathroom.

4 THE COURT: Okay. All right. We'll take a brief recess.
5 And Counsel, we'll take a recess for just a couple of minutes,
6 we'll resume.

7 [Recess at 10:37 a.m.]

8 [Resumed at 10:41 a.m.]

9 THE COURT: We're going to go back on the record. All
10 right. Thanks, Counsel and Ms. Ahern. We're ready to back on
11 the record here.

12 The -- in the interim, since the last time we had a
13 hearing we -- the Court is in receipt of the decision filed by
14 the Nevada Supreme Court on January 26, 2017, in this case, in
15 which the decision -- the underlying decision about the right
16 to the 65 per has been affirmed. So, is there anything about
17 the Court's decision that any party wishes to discuss? Any
18 issues with the 65 percent, 35 percent -

19 MR. POWELL: No, Your Honor --

20 THE COURT: -- decision from the Supreme Court?

21 MR. POWELL: -- not on our end.

22 THE COURT: Essentially the court was affirmed and the
23 appeal was dismissed. So we're done.

24 We've got the summary judgment concerning a Breach
25 of Fiduciary Duty and Attorney's Fees was affirmed. So we're

1 ready to just proceed on the remaining issues?

2 MR. POWELL: Yes, correct, Your Honor.

3 THE COURT: Okay. All right. So, all right. Yeah,
4 Counsel if you want to spread out.

5 MR. POWELL: Okay.

6 THE COURT: Since Mr. Semenza's not going to be
7 participating you can each take a table and we'll proceed then
8 with the testimony.

9 MR. MOODY: So, Your Honor, if it's okay, I think I'll
10 begin --

11 THE COURT: Okay.

12 MR. MOODY: -- and just go over some background, maybe
13 spend thirty minutes with Mr. Waid depending on how long he
14 chooses to speak. But that might get us up close to our first
15 break this morning. So I'll ask Mr. Waid to take the stand if
16 that's okay.

17 THE COURT: Okay.

18 MR. KIEFER: And Mr. Waid is our one and only witness for
19 the movements -- Movants, Your Honor.

20 THE COURT: Okay. Fine, thank you.

21 THE CLERK: Please raise your right hand.

22 FREDRICK WAID, TRUSTEE WITNESS, SWORN

23 THE CLERK: Please state your name for the record and
24 spell it.

25 THE WITNESS: Fredrick, F-R-E-D-R-I-C-K, Waid, W-A-I-D.

1 MR. MOODY: Your Honor, would it be okay if I remain
2 seated while I ask --

3 THE COURT: Certainly.

4 MR. MOODY: -- some questions?

5 DIRECT EXAMINATION

6 BY MR. MOODY:

7 Q Good morning, Mr. Waid.

8 A Good morning.

9 Q And what is your role in this case?

10 A I am the Court Appointed Successor Trustee.

11 Q Approximately when were you appointed as the
12 Successor Trustee?

13 A There were a number of hearings in late March of
14 2015. I received the order approximately the 30th of March
15 and met with counsel the day after and began that assignment.

16 Q What is your understanding -- and I know there's a
17 court order to this effect, but I just want to get your
18 understanding of what Eleanor Ahern's ongoing responsibilities
19 were once you were appointed as Trustee.

20 A My understandings, Mr. Moody, is that, consistent
21 with Nevada law and practice, the courts here generally do not
22 release a trustee who has been suspended or removed, for
23 cause, until a final accounting is completed. So while one
24 does not have direct daily or other operational administrative
25 duties as a trustee, they are, nonetheless, still under the

1 jurisdiction of the court and have all the duties and
2 responsibilities to assist from an accounting, records aspect,
3 a marshaling of assets where needed.

4 Q And can you tell the Court how cooperative Ms. Ahern
5 has been with you in your role as Successor Trustee in light
6 of her ongoing responsibilities?

7 A I think I'd prefer, rather than render my own
8 opinion on the matter, that we refer to the Court's record.
9 This Court has entered numerous orders, at my request, or my
10 petition or plea, or motion, seeking court intervention to
11 require Ms. Ahern's cooperation.

12 The record is clear that this matter went up for a
13 contempt proceeding before Judge Gonzalez. For some technical
14 reasons it was sent back down, and to this date, Ms. Ahern has
15 not sat for her deposition, which is my primary wish and
16 desire as a Successor Trustee. So that simply has not
17 occurred.

18 Q It's fair to say, "She has not been cooperative with
19 you?"

20 A That is correct.

21 Q Can you tell the Court what you did following your
22 appointment, specifically in the days and weeks following that
23 appointment?

24 A I met with or interviewed or discussed, at length,
25 with her then-counsel at Marquis and Aurbach to understand and

1 locate where the assets were, how they were held. I met with
2 Mr. Powell and his firm. I spoke with the MTC beneficiaries,
3 Ms. Montoya and Ms. Bouvier, and at the time, Mr. Warnick as
4 well. I was seeking any and all information. I also spoke
5 with Mr. Johnston, he was Texas counsel, I believe in
6 Midland-Odessa, in an effort to marshal the assets and find
7 where the trust funds were located.

8 Q And what did you find?

9 A Initially, as I reported, that, based on the court's
10 calculations, there was an anticipation that there would be
11 well in excess of a million nine or even close to \$2 million
12 held in trust accounts. I found less than \$10,000.
13 Approximately nine thousand and some change.

14 Q Were you able to find and restore any money?

15 A Yes. In --

16 Q Can you tell the Court what you found and
17 approximately how much you were able to bring back into the
18 Trust?

19 A I'll refer -- I don't have my notes in the prior
20 pleadings, but the interim report indicated over the next two
21 months or so, I recovered approximately a million and six in
22 funds at various institutions or other places.

23 MR. MOODY: This will probably be a good time for me to
24 put the Trustee's exhibit list in front of the witness.

25 THE COURT: Okay.

1 THE WITNESS: Your Honor, Ms. Ahern has a question.

2 THE COURT: Okay.

3 THE WITNESS: Ms. Ahern's raising her hand again.

4 THE COURT: Okay. I'm sorry, thank you. Ms. Ahern, hi.

5 MS. AHERN: I cannot hear.

6 THE COURT: Okay.

7 MS. AHERN: And of course it's very foggy, but I cannot
8 hear.

9 THE COURT: All Right.

10 MS. AHERN: So if somebody will say something, please say
11 it slowly.

12 THE COURT: All right. So we'll try to remember to speak
13 loudly and into our respective microphones.

14 MR. MOODY: Judge, can I approach the witness?

15 MS. AHERN: Distinctly is what I need. Slowly and
16 distinctly, please.

17 THE COURT: Okay. All right. We'll work on that.

18 MR. MOODY: Can I approach the witness?

19 THE COURT: Yes.

20 BY MR. MOODY:

21 Q Mr. Waid, we have marked as Trustee's Exhibit 42,
22 the Interim Trustee Report. And I want to point out that this
23 was filed, under seal, pursuant to court order dated February
24 11, 2015. So although I'm going to have you refer to this, I
25 am not seeking to have this admitted.

1 THE COURT: Understood.

2 BY MR. MOODY:

3 Q Mr. Waid, is this the report that you were
4 discussing?

5 A Yes, sir.

6 Q And does that confirm the amount that you were able
7 to restore to the Trust?

8 A Yes. As of -- on page 10, as of June 30, 2015,
9 approximately two months -- three months after my appointment,
10 \$1,827,902 was recovered.

11 MS. AHERN: Please repeat.

12 THE WITNESS: \$1,827,902.08 was recovered.

13 BY MR. MOODY:

14 Q Mr. Waid, at that point, did you know what money
15 remained missing?

16 A No, I did not.

17 Q Can you tell the Court what you did to determine
18 what amount was missing?

19 A Marquis and Aurbach had limited records that were
20 available for my review. I was able to review what was filed
21 in Ms. Ahern's accounting that she produced to the Court in
22 March. I then commenced a series of actions, including
23 subpoenas --

24 MS. AHERN: I'm sorry. I have to go to the bathroom.

25 THE COURT: Okay. We'll take a break. We'll go off the

1 record.

2 [Recess at 10:51 a.m.]

3 [Resumed at 10:55 a.m.]

4 MS. AHERN: Have a question.

5 THE COURT: Sure.

6 MS. AHERN: I would like a transcript because such
7 detail, may I please have a transcript?

8 THE COURT: Well --

9 MS. AHERN: Also provide a CD?

10 THE COURT: Okay. In addition to the CD and a
11 transcript, there is a cost associated with that. So if
12 you're not going to be able to pay that, you're going to need
13 to file a request for in forma pauperis, specifically to
14 request --

15 MS. AHERN: I'm sorry, I don't -- I need to write down
16 what that thing you said.

17 THE COURT: Linda --

18 MS. AHERN: File what?

19 MR. WAID: I'll help her with that.

20 THE COURT: Linda will send you the -- Linda and Mr. Waid
21 -- my assistant will work with Mr. Waid to get you the
22 document that you need to file. It's called in forma --

23 MS. AHERN: I-N --

24 THE COURT: -- F-O-R-M-A, in forma, and the third word is
25 pauperis, P-A-U-P-E-R-I-S. And it's a special application you

1 have to make in order to be relieved of court costs. So Mr.
2 Waid and my assistant will make sure you get the right kind of
3 a form.

4 MR. WAID: Your Honor, I'll pay for it.

5 THE COURT: Okay.

6 Mr. Waid said he'll pay for the transcript.

7 But, do you want to have her go ahead and -- we can
8 have her go ahead and fill out an in forma pauperis.

9 MR. WAID: Let's just move along.

10 THE COURT: Mr. Waid said it's no problem. He'll make
11 sure that the cost of the transcript and the DVD are paid. So
12 since he's agreed to -- that the Trust will pay those bills,
13 we're going to go -- we're going to get that ordered then.
14 Kerry knows and she'll get to work on that for you. Okay.

15 MS. AHERN: Please, Mr. Waid, thank you very much for
16 being my Trustee. That is so generous.

17 THE COURT: Uh-huh. All right. Well, we'll get to move
18 on -- we'll get moving then. Okay.

19 So I think, Mr. Moody, you were asking about the --

20 MR. MOODY: Yeah.

21 THE COURT: -- what he did to -- in his search?

22 MR. MOODY: Correct. Thank you, Your Honor.

23 BY MR. MOODY:

24 Q Mr. Waid, we left off, you had just mentioned that
25 one of the starting places you went to was the Brief filed by

1 Ms. Ahern, and you said it was March. If you'll turn to
2 Exhibit 41 in the binder in front of you?

3 THE COURT: Mr. Moody, this is unfiled. Do you know if
4 this document --

5 MR. MOODY: This was filed under seal.

6 THE COURT: Oh, it was filed -- also filed under seal.

7 MR. MOODY: Yes. Yes. And for the same reason, I won't
8 be asking for this to be admitted.

9 THE COURT: Thank you. So noted.

10 BY MR. MOODY:

11 Q So, Mr. Waid, just for clarification, March of what
12 year was that Brief submitted by Ms. Ahern?

13 A The copy that I have is not file-stamped, but it
14 indicates the date of the hearing as March 20th. Let me see
15 if I can find --

16 Q Of what year?

17 A Of 2015.

18 Q Okay. Thanks. That's all I need. So, I'd like you
19 to continue. You said that you started with that Brief and
20 the question, before we broke was, what did you do to figure
21 out how much money was still unrecovered from the Trust?

22 A There were representations in that Brief relating to
23 a Wells Fargo account. I contacted Wells Fargo Account
24 Services. I provided them with a copy of the Court's Order,
25 and at that point the bank informed me that there was

1 approximately \$9,000 on deposit.

2 Q All right. You actually ended up subpoenaing
3 records from Wells Fargo, is that true?

4 A Yes, sir.

5 Q And can you tell the Court about that production?

6 A That was a rather lengthy production, I believe
7 three or four separate subpoenas. There were numerous
8 requests from Wells Fargo Bank to extend the period of time in
9 which to answer. I dealt with, first, the private bank
10 division. I then was referred, or the matter was transferred
11 to the Legal Production Department in Phoenix.

12 The matter was then referred to the Fraud
13 Department. Given the complexity of the records and the
14 expansive nature of the accounts and transactional histories
15 and things that the bank determined on their own, I then was
16 transferred, ultimately, to the senior legal department
17 officer in charge of the subpoenas that were requested of the
18 bank.

19 Q And can you tell the Court, approximately, how many
20 pages of documents we ended up receiving from Wells Fargo?

21 A I think they would fill some of the banker's boxes.
22 It's voluminous.

23 Q I'd like you to look at what have been marked as
24 Exhibits 1 through 39, please. Are these some of those
25 documents that you received from Wells Fargo?

1 A Yes.

2 Q And were you able to identify some people and
3 entities?

4 THE COURT: Ms. Ahern, you had a question?

5 MS. AHERN: Yes, I would like to receive all exhibits
6 that he is now speaking about.

7 THE COURT: Okay. All right. Well, this is the issue.
8 Since you requested not to be required to appear in person,
9 the process that the Nevada Supreme Court allows for remote
10 appearance of a party who's -- of a witness who's going to
11 testify, does require that the witness have the records with
12 them. However, given the late request, we were unable to
13 notify Counsel in time that you had requested this
14 accommodation of appearing remotely.

15 So it's by virtue of the fact that you had failed to
16 notify us, in advance, pursuant to Part IX of the Supreme
17 Court rules governing appearance by audio/visual transmission
18 equipment. Technically, parties to litigation are not allowed
19 to appear remotely. However, we wanted to accommodate your
20 special needs under the ADA as well as your request for this
21 accommodation for financial reasons.

22 So the Court did grant your accommodation and set up
23 the video link for you, but it -- the side effect of that is,
24 you do not have the exhibits before you. So to that extent,
25 to the extent that any exhibit is admitted, we will make sure,

1 Mr. Moody, you'll send a copy of any exhibit that is admitted,
2 correct?

3 MR. MOODY: I will, Your Honor.

4 THE COURT: So any exhibits that are admitted by the
5 Court will be mailed to you. And as mentioned previously, Mr.
6 Waid's going to see that you get a transcript and we'll send
7 you the DVD as well.

8 THE WITNESS: If I could point out one item? In my
9 efforts to cooperate with Ms. Ahern's then-Counsel, Mr.
10 Lenhard and Ms. Peterson, they received all of the subpoenaed
11 production documents, and it is my understanding having worked
12 with their firm, they regularly deliver those to their
13 clients. So I'm fairly confident that that process did occur.

14 THE COURT: Okay. But just to the extent that for her to
15 know what exhibit is what document there is -- in Mr. Moody's
16 exhibit book, there is a list of exhibits, and she can use
17 that list of exhibits to find documents that Mr. Lenhard may
18 have provided to her. And if any exhibit is admitted, we'll
19 also send her a copy of any admitted exhibits. Thank you.

20 All right. Ms. Ahern, you've got your hand up
21 again.

22 MS. AHERN: I did not receive any documents from
23 Brownstein regarding the subject matter that we are
24 discussing. So I thank you very much for giving all exhibits
25 mentioned. Thank you.

1 THE COURT: Okay. I'm going to make very clear what I'm
2 directing Mr. Moody to do. Any exhibits that are admitted
3 will be sent. Admitted exhibits.

4 MR. MOODY: Correct.

5 THE COURT: And only those that are admitted. Some of
6 these, as we have referenced, are documents in the Court's
7 records that are understand seal.

8 MR. MOODY: I may be able to help Ms. Ahern with one
9 point, and that is, prior to her scheduled deposition she
10 requested written questions and copies of any exhibits we
11 planned to ask questions about. 1 through 39 are exactly
12 those documents that, that reference the questions and were
13 the backup information.

14 So I don't -- I can't say whether she received those
15 or not from Lenhard, but she did make that request. We
16 fulfilled it, so she may have those.

17 THE COURT: All right. So then for the record, based on
18 Ms. Ahern's request, Mr. Lenhard was provided with written
19 questions and the corresponding Exhibits 1 through 39 in the
20 packet today. So whether Mr. Lenhard has forwarded that to
21 Ms. Ahern or not, I don't know. But they were at least
22 provided and that's a reference for her to go find them.
23 Okay. Great. Thank you. You can proceed.

24 MR. MOODY: Your Honor, I believe I've laid the
25 foundation for where most, if not all these exhibits came

1 from.

2 BY MR. MOODY:

3 Q Did you also subpoena documents from McNair &
4 Associates?

5 A Yes.

6 Q Did you also subpoena documents from the Secretary
7 of State?

8 A Yes.

9 Q And --

10 A For Nevada.

11 Q Of Nevada, that's correct. And are these at least a
12 portion of those documents that were subpoenaed?

13 A That is correct.

14 MR. MOODY: Your Honor, I'd offer Exhibits 1 through 39.

15 THE COURT: Exhibits 1 through 39 are admitted.

16 [Trustee's Exhibits 1 through 39 Admitted]

17 THE COURT: And that means that a copy will be sent to
18 Ms. Ahern after the hearing.

19 MR. MOODY: Okay. Very good. Thank you.

20 THE COURT: Thank you. I appreciate that.

21 BY MR. MOODY:

22 Q Okay. Now, in addition to the Wells Fargo documents
23 you subpoenaed, Secretary of State, McNair & Associates -- and
24 by the way, who is McNair & Associates?

25 A They're an accounting firm here in Las Vegas.

1 Q You tried to work with Texas counsel as well as
2 subpoena documents in Texas, is that correct?

3 A That's correct. The Texas firms listed on Ms.
4 Ahern's accounting that she filed in March of 2015, we
5 subpoenaed their records.

6 Q Can you tell the Court how successful you were in
7 obtaining records in the State of Texas?

8 A Again, I think I'll refer to the Court's record on
9 that matter. We sought cooperation with Counsel. We sought
10 waiver agreements. I instigated legal proceedings in Texas to
11 determine the extent of trust funds in trust accounts of
12 various counsels. We sought records in the subpoena with
13 respect to trust instructions and directions that were, we
14 believed, provided to Ms. Ahern as to charitable donations, as
15 to restructuring or reforming the Trust as a means to
16 determine where these funds may have ended up.

17 Q You did get some Texas documents, true?

18 A Very limited.

19 Q All right. For the most part, you were not
20 successful getting the documents that you wanted in the State
21 of Texas.

22 A That is correct.

23 Q All right. Can you tell the Court about your
24 involvement with what I will refer to as the Mann litigation
25 in front of Judge Johnson here in the 8th Judicial District

1 Court?

2 A Given that I was not provided with the records that
3 were represented to this Court, existed, and through limited
4 disclosures from Mr. Mann, we knew he had, at one point,
5 exhaustive records on the Trust, we sought intervention, if
6 you will, in that case to obtain records. That matter was
7 vigorously opposed by Mr. Shapiro who appeared on behalf of
8 Ms. Ahern, and I believe Ms. Nounna. They were both parties
9 in that case, and that matter is still pending with Judge
10 Johnson. He has not issued his final orders on the release of
11 those records.

12 Q Okay. I want to fast-forward now to what has
13 transpired since Mr. Lenhard withdrew, Mr. Lenhard and his
14 firm, withdrew from the case. Can you tell the Court, this
15 Court, what your interactions with Ms. Ahern have been?

16 A They were somewhat -- have been somewhat limited. I
17 conferred with Mr. Lenhard at the end of the year because he
18 actually withdrew from this case at the District Court level,
19 but he has not withdrawn at -- with respect to the Supreme
20 Court case. And so, I knew he was still somewhat involved in
21 the matter.

22 I contacted him to inquire if he had heard from
23 Eleanor, what her medical needs were, what other needs she may
24 have. I still have ongoing fiduciary responsibilities to her,
25 and so I have been in contact with him in November, December,

1 and in January.

2 Q Did you perform a well-check on Ms. Ahern?

3 A Yes. After speaking with Mr. Lenhard, he thought it
4 would be advisable that I go to Mesquite. I went to Mesquite.
5 I knocked on Ms. Ahern's residence, the same residence I had
6 been to before with Mr. Lenhard. She did not answer the door.
7 I checked with neighbors. They said she was there. Neither
8 Mr. Lenhard -- and for that matter, I had spoken with Mr.
9 Semenza earlier and he had not heard from her.

10 So I proceeded to call Metro, excuse me, the
11 Mesquite Police Department to come with me to perform a well
12 check and that was accomplished.

13 Q Mr. Lenhard provided an address, a mailing address,
14 for Ms. Ahern when he withdrew from this case. Can you tell
15 the Court whether service on that address has been successful
16 with our firm?

17 A I believe all of the certificates of service that
18 were addressed to the 400 street address were returned as
19 undeliverable. I've since learned that that is -- well, I
20 knew that was not the actual physical residence where Ms.
21 Ahern resided. She resides at 111. Mail was being delivered
22 to 400 and it has subsequently been returned. Ms. Ahern has
23 now provided the Court and our office, my office, with a new
24 address. I believe it's a postal service mailbox facility
25 there in Mesquite.